APPENDIX

Supreme Court of the United States

No. 70-5030

MARGARET PAPACHRISTOU, ET AL., *Petitioners*,

—v.—

CITY OF JACKSONVILLE

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEALS OF FLORIDA, FIRST DISTRICT

PETITION FOR CERTIORARI FILED OCTOBER 7, 1970
CERTIORARI GRANTED JUNE 14, 1971

Supreme Court of the United States

No. 70-5030

MARGARET PAPACHRISTOU, ET AL.,
Petitioners,

—v.—

CITY OF JACKSONVILLE

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEALS OF FLORIDA, FIRST DISTRICT

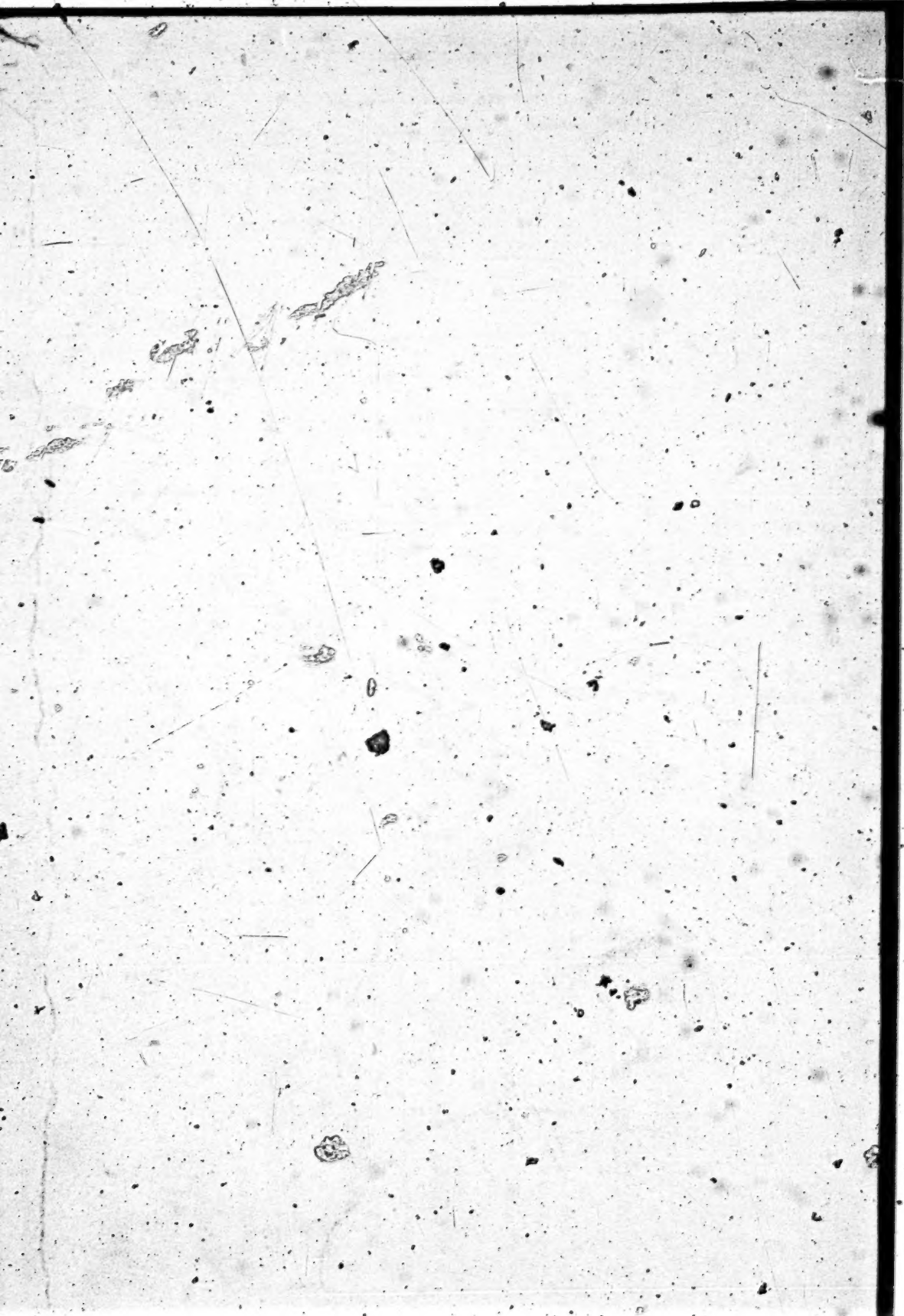
INDEX

CHRONOLOGICAL LISTING OF IMPORTANT EVENTS

January 29, 1969	Hugh Brown arrested.
February 4, 1969	Hugh Brown tried, convicted, and sentenced in the Municipal Court.
February 20, 1969	Jimmy Lee Smith arrested.
February 27, 1969	Jimmy Lee Smith tried, convicted, and sentenced in the Municipal Court.
March 18, 1969	Henry Edward Heath arrested.
March 27, 1969	Henry Edward Heath tried, convicted, and sentenced in the Municipal Court.
April 18, 1969	Thomas Owen Campbell arrested.
April 20, 1969	Margaret M. Papachristou, Betty Jean Calloway, Eugene Eddie Melton, and Leonard Johnson arrested.
May 1, 1969	Thomas Owen Campbell tried, convicted, and sentenced in the Municipal Court.
May 8, 1969	Margaret M. Papachristou, Betty Jean Calloway, Eugene Eddie Melton, and Leonard Johnson tried, sentenced, and convicted in the Municipal Court.
November 28, 1969	Convictions and sentences of all parties affirmed by Circuit Court (after consolidation of all cases for appeal).
December 29, 1969	Petition for Writ of Certiorari filed by all parties in District Court of Appeal, First District of Florida.

CHRONOLOGICAL LISTING OF IMPORTANT EVENTS —Continued

June 9, 1970	Opinion issued by District Court of Appeal, First District of Florida, dismissing Petition for Writ of Certiorari.
June 25, 1970	Mandate issued by District Court of Appeal, First District of Florida.



LAST NAME	FIRST NAME	MIDDLE	(ALIASES)	DAY OF WEEK
CROWN, HUGH (N)				WED

ADDRESS	DATE	TIME BOOKED
520 BROAD ST.	29JAN69	2;23A M

RACE	SEX	AGE	DATE OF BIRTH	PLACE OF BIRTH	OCCUPATION	NATIONALITY
N	M	25	14MAR43	JAX FLA	PLAYGROUND DIR	AMER

HEIGHT	WEIGHT	BUILD	HAIR	EYES	COMP.	SCARS, TATTOOS, AMPUTATIONS
5'10	145	SLIM	Black	Brown	DARK	

DESCRIPTION AND FINGERPRINTS BY	TIME
W. M. SAPP	230A M

ARREST NUMBER 01343

WHERE ARRESTED	BEAT NO.	TIME ARRESTED
CHURCH & BROAD	31	1;40A M

TRANSPORTED BY	SOCIAL SECURITY NO.	JPD ID NO.	HOW ARREST MADE
416			ON VIEW X CALL ☐ WARRANT ☐

COMPLAINANT	ADDRESS	PHONE
J.H. JOHNS JPD		

OFFENSES CHARGED (DRIVER'S LICENSE NUMBER WHERE INDICATED)	DISPOSITION
VAGRANCY DISORDERLY LOITERING ON STREET NG BOND $35.	(A) Fined
DISORDERLY CONDUCT RESISTING ARREST WITH VIOLENCE NG BOND $250.	(B) Fined
POSSESSION OF NARCOTICS STATE	(C) Not Bound
(D)	(D)

WITNESS

ARRESTING OFFICER	BADGE NO.	SEARCHING OFFICER	BOOKING OFFICER
J.H. JOHNS 235	4-4	WHALEY	C.B. TOMPKINS

DATE AND TIME TO APPEAR IN COURT	PROPERTY SIGNED FOR BY	DEFENSE ATTORNEY
29 JAN 69 8;30 A M		

PRISONER RELEASED ON	IN SUM OF	TIME	CONTINUED DATE
		M	

DATE	BY (SIGNATURE)	ABOVE BOND DELIVERED TO ME

PROPERTY TAKEN FROM PRISONER (INCLUDING AUTOS, YEAR, MAKE, TAG) NARRATIVE

KEY, KNIFE, CHAPSTICK — CAPT. DANSON

EVIDENCE: 2 PIECES OF ROLLED TIN FOIL WITH WHITE SUBSTANCE

RT INDEX PRINT

FORM P 002 (REV 10-68)

1

CASE

TRANSCRIPT OF RECORD FROM DOCKET BOOK 1 PAGE 01343 (1969)

In the Municipal Court of the City of Jacksonville, Duval County

State of Florida

THE CITY OF JACKSONVILLE

vs.

NM 25

Hugh Brown
Defendant

CHARGE

Vagrancy Disorderly Loitering on Street

Disorderly Conduct Resisting Arrest with Violence

Possession of Narcotics

Defendant arrested by officer J. H. Johns *The Chief of Police took from the defendant* ..... *Dollars, as security for his appearance before the City Court. Said defendant being called for trial on the* ..... *day of* ..... *and not answering or appearing, IT IS HEREBY ORDERED AND ADJUDGED, That the said bond be estreated, and thereupon it is considered and adjudged that the City of Jacksonville recover of and from the said* ..... *the sum of* ..... *Dollars, for which let execution issue.*

Attest:

..... *(Recorder)* .....
Clerk Municipal Court — Judge Municipal Court

Defendant being arraigned for trial on the 29th *day of* January, 1969,
Continued until .....

and entered a plea of NOT *guilty to the above charge.*

Names of Witnesses Sworn for the Prosecution

J. H. Johns

Names of Witnesses Sworn for the Defendant

Unknown

Received of the Recorder .....
Return of $ .....
Bondsman

SATISFACTION OF JUDGMENT
ASSESSING FINE

Jacksonville, Fla., ...

RECEIVED the sum of ..... *Dollars in satisfaction of this judgment.*

(Recorder)

After hearing the evidence and duly considering the same, the Court finds the defendant Hugh Brown *guilty of the charge; it is therefore considered and adjudged by the Court that the defendant is sentenced*

(A) 90 days (B) 90 days (C) Nol Pros

To imprisonment in the city jail for a term of 180 *days, and is so committed.*

from the defendant ..... Dollars, as security for his appearance before the City Court. Said defendant being called for trial on the ..... day of .....

and not answering or appearing, IT IS HEREBY ORDERED AND ADJUDGED, That the said bond oe estreated, and thereupon it is considered and adjudged that the City of Jacksonville recover of and from the said ..... the sum of ..... Dollars, for which let execution issue.

Attest:

..... (Recorder) .....

Clerk Municipal Court — Judge Municipal Court

Defendant being arraigned for trial on the 29th day of January, 1969,

Continued until .....

and entered a plea of NOT guilty to the above charge.

Names of Witnesses Sworn for the Prosecution

J. H. Johns

Names of Witnesses Sworn for the Defendant

Unknown

Received of the Recorder .....

Return of $ .....

Bondsman

SATISFACTION OF JUDGMENT
ASSESSING FINE

Jacksonville, Fla., ...

RECEIVED the sum of ..... Dollars in satisfaction of this judgment.

(Recorder)

After hearing the evidence and duly considering the same, the Court finds the defendant Hugh Brown guilty of the charge; it is therefore considered and adjudged by the Court that the defendant is sentenced (A) 90 days (B) 90 days (C) Nol Pros

To imprisonment in the city jail for a term of 180 days, and is so committed.

To pay a fine of ..... Dollars, forthwith, and default whereof being made, it is considered and adjudged by the Court that the said defendant stand committed to the city jail until said fine is paid or satisfied according to law.

S. Morgan Slaughter
Attest: Clerk Of Municipal Court

By: Cecil W. Thomas (Recorder)
Deputy Clerk Municipal Court — Judge Municipal Court

From the above judgement and sentence the said Hugh Brown by his attorney, Samuel Jacobson appealed to the Circuit Court in and for Duval County, on the 4th day of February and gave bond with Allegheny Mutual Casualty Company, in the sum of $500 Dollars, as required by law, which was approved.

S. Morgan Slaughter
Attest: Clerk of Municipal Court

By: Cecil W. Thomas (Recorder)
Deputy Clerk Municipal Court — Judge Municipal Court

Return filed with Clerk of Appellate Court ....., A D

LAST NAME	FIRST NAME	MIDDLE	(ALIASES)	DAY OF WEEK
SMITH	JIMMIE	LEE		THURS

ARREST NUMBER 02553

ADDRESS	DATE	TIME BOOKED
1734 W. UNION ST	20FEB69	10:10AM

RACE	SEX	AGE	DATE OF BIRTH	PLACE OF BIRTH	OCCUPATION	NATIONALITY
N	M	27	21DEC42	JAX FLA	LABOR	AMER

HEIGHT	WEIGHT	BUILD	HAIR	EYES	COMP	SCARS, TATTOOS, AMPUTATIONS
5'10	165	MED.	BK	BR	BR	

DESCRIPTION AND FINGERPRINTS BY	TIME
M. Hollaman Jr.	10:25 AM

WHERE ARRESTED	BEAT NO.	TIME ARRESTED
BROAD & ADAMS STS.	231	10:05A M

TRANSPORTED BY	SOCIAL SECURITY NO.	JPD ID NO.	HOW ARREST MADE
CAR 2331	?	1384678	IN VIEW ☐ CALL ☒ WARRANT ☐

COMPLAINANT — ADDRESS — PHONE

OFFENSES CHARGED (DRIVER'S LICENSE NUMBER WHERE INDICATED) — DISPOSITION

(A) VAGRANCY- VAGABON — BOND $100.00 — (A) 30 Days

(B) Appeal Bond 500.00 (B)

(C) (C)

(D) (D)

WITNESS

ARRESTING OFFICER	BADGE NO.	SEARCHING OFFICER	BOOKING OFFICER
A. JONES 4-2	112	E LEE JR	CAPT ANDRESON L W STANLEY JR

DATE AND TIME TO APPEAR IN COURT	PROPERTY SIGNED FOR BY	DEFENSE ATTORNEY
21 FEB 69 8:30A M		

PRISONER RELEASED ON	IN SUM OF	TIME	CONTINUED DATE
	100	M	2-27

DATE	BY (SIGNATURE)	ABOVE BOND DELIVERED TO ME
	AD	

PROPERTY TAKEN FROM PRISONER (INCLUDING AUTOS, YEAR, MAKE, TAG) — NARRATIVE

[redacted]

RT INDEX PRINT

FCAN P-602 (REV 10-68)

Refunded 2-27-69.
ck. #489

ARREST NUMBER 01109

LAST NAME	FIRST NAME	MIDDLE	(ALIASES)	DAY OF WEEK
HEATH,	HENRY	EDWARD		TUE

ADDRESS	DATE	TIME BOOKED
8451 OSTEEN ST.	18 MAR 69	10:45PM

RACE	SEX	AGE	DATE OF BIRTH	PLACE OF BIRTH	OCCUPATION	NATIONALITY
W	M	25	12 MAR 43	JAX., FLA.	TICKET AGENT	AMERICAN

HEIGHT	WEIGHT	BUILD	HAIR	EYES	COMP	SCARS, TATTOOS, AMPUTATIONS
6-1	185	MED	BRN	HAZ	FAIR	

DESCRIPTION AND FINGERPRINTS BY: Ralph L Luzon TIME: 11:05P M

WHERE ARRESTED	BEAT NO.	TIME ARRESTED
1913 NEBLICK RD	3223	9:20P M

TRANSPORTED BY: CAR 417 SOCIAL SECURITY NO.: ? 136-382
HOW ARREST MADE: ON VIEW X CALL ☐ WARRANT ☐
PHONE

COMPLAINANT: J L ZIER JPD

OFFENSES CHARGED (DRIVER'S LICENSE NUMBER WHERE INDICATED) — DISPOSITION

(A) VAGRANCY COMMON THIEF BOND $500.00 — (A) ICCa.
(B) Appeal Bond 1000.00 — (B)
(C) — (C)
(D) — (D)

WITNESS: NONE

ARRESTING OFFICER	BADGE NO.	SEARCHING OFFICER	BOOKING OFFICER
J L ZIER 98	4-3	STANLEY	R E HANSEN

DATE AND TIME TO APPEAR IN COURT: 19 MAR 69 8:30A PROPERTY SIGNED FOR BY: M DEFENSE ATTORNEY: S Jacobson

PRISONER RELEASED ON: APP BOND IN SUM OF: $500.00 TIME: DKT M CONTINUED DATE: 3-21
Ordinary L. Roebuck

ABOVE BOND DELIVERED TO ME
DATE: 18 MAR 69 ARFLIN BONDING CO. REH

PROPERTY TAKEN FROM PRISONER (INCLUDING AUTOS, YEAR, MAKE, TAG) NARRATIVE
NONE

RT INDEX PRINT

FORM P-002 (REV 10.68)

170EZ

01

Refunded
3-28-69
CK. # 609

6

TRANSCRIPT OF RECORD FROM DOCKET BOOK 1 PAGE 01139

In the Municipal Court of the City of Jacksonville, Duval County, State of Florida

THE CITY OF JACKSONVILLE

vs. WM 25

Henry Edward Heath
Defendant

CHARGE

VAGRANCY COMMON THIEF

Defendant arrested by officer J. L. Zier *The Chief of Police took from the defendant* $500.00 AP Arflin *Dollars, as security for his appearance before the City Court. Said defendant being called for trial on the* _____ *day of* _____ *and not answering or appearing, IT IS HEREBY ORDERED AND ADJUDGED, That the said bond be estreated, and thereupon it is considered and adjudged that the City of Jacksonville recover of and from the said* _____ *the sum of* _____ *Dollars, for which let execution issue.*

Attest:

_____ *(Recorder)* _____
Clerk Municipal Court — Judge Municipal Court

Defendant being arraigned for trial on the 18th *day of* March, 1969.
Continued until March 27, 1969

and entered a plea of NOT *guilty to the above charge.*

Names of Witnesses Sworn for the Prosecution

J. L. Zier

Names of Witnesses Sworn for the Defendant

Unknown

Received of the Recorder _____
Return of $ _____

Bondsman

SATISFACTION OF JUDGMENT
ASSESSING FINE

Jacksonville, Fla., _____

RECEIVED the sum of _____ *Dollars in satisfaction of this judgment.*

_____

After hearing the evidence and duly considering the same, the Court finds the defendant Henry Edward Heath *guilty of the charge; it is therefore considered and adjudged by the Court that the defendant is sentenced*

To imprisonment in the city jail for a term of 10 *days, and is so committed.*

To pay a fine of _____ *Dollars, forthwith, and default whereof being made, it is considered and adjudged by the Court that the said defendant stand committed to the city jail*

from the defendant $500.00 AP Arflin Dollars, as security for his appearance before the City Court. Said defendant being called for trial on the _____ day of _____ and not answering or appearing, IT IS HEREBY ORDERED AND ADJUDGED, That the said bond be estreated, and thereupon it is considered and adjudged that the City of Jacksonville recover of and from the said _____ the sum of _____ Dollars, for which let execution issue.

Attest:

_____ (Recorder) _____
Clerk Municipal Court — Judge Municipal Court

Defendant being arraigned for trial on the 18th day of March, 1969,
Continued until March 27, 1969

and entered a plea of NOT guilty to the above charge.

Names of Witnesses Sworn for the Prosecution

J. L. Zier

Names of Witnesses Sworn for the Defendant

Unknown

Received of the Recorder _____

Return of $ _____

_____
Bondsman

SATISFACTION OF JUDGMENT
ASSESSING FINE

Jacksonville, Fla., _____

RECEIVED the sum of _____ Dollars in satisfaction of this judgment.

_____

After hearing the evidence and duly considering the same, the Court finds the defendant Henry Edward Heath guilty of the charge; it is therefore considered and adjudged by the Court that the defendant is sentenced

To imprisonment in the city jail for a term of 10 days, and is so committed.

To pay a fine of _____ Dollars, forthwith, and default whereof being made, it is considered and adjudged by the Court that the said defendant stand committed to the city jail until said fine is paid or satisfied according to law.

S. Morgan Slaughter
Clerk of Circuit and Municipal Courts

Attest:

By _____ (Recorder) _____
Deputy Clerk Municipal Court — Judge Municipal Court

From the above judgement and sentence the said _____ appealed to the Circuit Court in and for Duval County, on the _____ day of _____ and gave bond with _____ sureties, in the sum of _____ Dollars, as required by law, which was approved.

02

Attest:

_____ (Recorder) _____
Clerk Municipal Court — Judge Municipal Court

LAST NAME: CAMPBELL, THOMAS OWEN | FIRST NAME | MIDDLE | (ALIASES) | DAY OF WEEK: FRI.

ADDRESS: 5738 BLACKTHORN RD. | DATE: 18APR69 | TIME BOOKED: 2:00 A.M

RACE	SEX	AGE	DATE OF BIRTH	PLACE OF BIRTH	OCCUPATION	NATIONALITY
W	M	26	3-15-43	MIAMI, OKLA.	LABORER _CARPENTER	AMER

HEIGHT	WEIGHT	BUILD	HAIR	EYES	COMP.	SCARS, TATTOOS, AMPUTATIONS
5'11	215	Med	Brn	Blu	Fair	

DESCRIPTION AND FINGERPRINTS BY: Baker | TIME: 2:10 AM

WHERE ARRESTED: 5738 BLACKTHORN RD. | BEAT NO.: 125 | TIME ARRESTED: 12:15 A.M

TRANSPORTED BY	SOCIAL SECURITY NO.	JPD ID NO.	HOW ARREST MADE
CAR 418	?	1-5-2-5	ON VIEW X CALL ☐ WARRANT ☐

COMPLAINANT: J.L.ZIER | ADDRESS: JPD | PHONE:

OFFENSES CHARGED (DRIVER'S LICENSE NUMBER WHERE INDICATED) | DISPOSITION

(A) VAGRANCY- COMMON THIEF, BOND $1000. (A) NG 30 Days

(B) POSSESSION OF BURGLARY TOOLS, (STATE CASE) NG (B) Nol Pros.

(C) Appeal Bond 1000.00 (C)

(D)

WITNESS: D.R.WHITE JPD

ARRESTING OFFICER	BADGE NO.	SEARCHING OFFICER	BOOKING OFFICER
J.L.ZIER 98	4-4	HILTON	J.M.WHALEY

DATE AND TIME TO APPEAR IN COURT	PROPERTY SIGNED FOR BY	DEFENSE ATTORNEY
18 APR 69 8:30A. M		

PRISONER RELEASED ON	IN SUM OF	TIME	CONTINUED DATE
	500	M	4-24

DATE	BY (SIGNATURE)	ABOVE BOND DELIVERED TO ME
	Arl	

PROPERTY TAKEN FROM PRISONER (INCLUDING AUTOS, YEAR, MAKE, TAG) NARRATIVE

$138. CASH, 5 CREDIT CARDS, WATCH, KEYS, 5 S.PLATE.KNIFE, CAPT. DANSON 5-1

EVIDENCE:
ONE JIMMIE- BAR 12" RED & BLACK

AT INDEX PRINT

FORM P-003 (REV 10-68)

Refunded 5-1-69 ck. #1775

ARREST NUMBER 05976

8

CASE

TRANSCRIPT OF RECORD FROM DOCKET BOOK 1 PAGE 05976 (1969)

In the Municipal Court of the City of Jacksonville, Duval County

State of Florida

THE CITY OF JACKSONVILLE

vs. WM 26

Thomas Owen Campbell
Defendant

CHARGE

Vagrancy - Common Thief
Possession of Burglary Tools

Defendant arrested by officer J. L. Zier *The Chief of Police took from the defendant* $500 AP Arflin $1,000 Appeal *Dollars, as security for his appearance before the City Court. Said defendant being called for trial on the* ____ *day of* ____ *and not answering or appearing, IT IS HEREBY ORDERED AND ADJUDGED, That the said bond oe estreated, and thereupon it is considered and adjudged that the City of Jacksonville recover of and from the said* ____ *the sum of* ____ *Dollars, for which let execution issue.*

Attest:

____ *(Recorder)* ____
Clerk Municipal Court — Judge Municipal Court

Defendant being arraigned for trial on the 18th *day of* April 1969,
Continued until May 1, 1969, April 24, 1969

and entered a plea of NOT *guilty to the above charge.*

Names of Witnesses Sworn for the Prosecution

J. L. Zier

Names of Witnesses Sworn for the Defendant

Received of the Recorder ____
Return of $ ____
Bondsman

SATISFACTION OF JUDGMENT
ASSESSING FINE

$

Jacksonville, Fla., ____

RECEIVED the sum of ____ *Dollars in satisfaction of this judgment.*

After hearing the evidence and duly considering the same, the Court finds the defendant Thomas Owen Campbell *guilty of the charge; it is therefore considered and adjudged by the Court that the defendant is sentenced*

To imprisonment in the city jail for a term of (a) 30 DAYS C/S (b) Nol Pros ____ *days, and is so committed.*

from the defendant $500 AP Arflin Dollars, as security for his appearance before the
$1,000 Appeal
City Court. Said defendant being called for trial on the ____ day of _____
and not answering or appearing, IT IS HEREBY ORDERED AND ADJUDGED, That the said bond oe estreated, and thereupon it is considered and adjudged that the City of Jacksonville recover of and from the said _____ the sum of _____ Dollars, for which let execution issue.

Attest:

_____ (Recorder) _____
Clerk Municipal Court — Judge Municipal Court

Defendant being arraigned for trial on the 18th day of April 1969,
Continued until May 1, 1969, April 24, 1969

and entered a plea of NOT guilty to the above charge.

Names of Witnesses Sworn for the Prosecution

J. L. Zier

Names of Witnesses Sworn for the Defendant

Received of the Recorder _____

Return of $ _____

Bondsman

SATISFACTION OF JUDGMENT
ASSESSING FINE

Jacksonville, Fla., _____

RECEIVED the sum of _____ Dollars in satisfaction of this judgment.

After hearing the evidence and duly considering the same, the Court finds the defendant Thomas Owen Campbell guilty of the charge; it is therefore considered and adjudged by the Court that the defendant is sentenced

To imprisonment in the city jail for a term of (a) 30 DAYS S/S (b) Nol Pros days, and is so committed.

To pay a fine of _____ Dollars, forthwith, and default whereof being made, it is considered and adjudged by the Court that the said defendant stand committed to the city jail until said fine is paid or satisfied according to law.

S. Morgan Slaughter
Clerk of Circuit and Municipal Courts

Attest:
By Carl A. Thomas (Recorder) _____
Deputy Clerk Municipal Court — Judge Municipal Court

From the above judgement and sentence the said _____
appealed to the Circuit Court in and for Duval County, on the ____ day of _____
and give bond with _____ sureties, in the sum of _____ Dollars, as required by law, which was approved.

Attest:

_____ (Recorder) _____
Clerk Municipal Court — Judge Municipal Court

2

X 4/

LAST NAME	FIRST NAME	MIDDLE	(ALIASES)	DAY OF WEEK
PAPACHRISTOU,	MARGARET	MC COY		SUN.

ADDRESS	DATE	TIME BOOKED
9157 SECOND AVE.	20APR69	4:00A. M

RACE	SEX	AGE	DATE OF BIRTH	PLACE OF BIRTH	OCCUPATION	NATIONALITY
W	F	23	1-21-46	JAX. FLA.	STUDENT	AMER

HEIGHT	WEIGHT	BUILD	HAIR	EYES	COMP.	SCARS, TATTOOS, AMPUTATIONS
5'	149	MED	Brwn	Hzl.	FAIR	

DESCRIPTION AND FINGERPRINTS BY	TIME
J.W. Rogers	4:40A M

WHERE ARRESTED	BEAT NO.	TIME ARRESTED
U.S.#1 SOUTH OF SOUTEL DRIVE.	1115	2:20A. M

TRANSPORTED BY	SOCIAL SECURITY NO.	JPD ID NO.	HOW ARREST MADE
1115	?		ON VIEW X CALL ☐ WARRANT ☐

COMPLAINANT — ADDRESS — PHONE

M. HARDING & L.V.HAYES JPD

OFFENSES CHARGED (DRIVER'S LICENSE NUMBER WHERE INDICATED) — DISPOSITION

(A) VAGRANCY, PROWLING BY AUTO, BOND$500. (A) 15 Cg

(B) Appeal Bond (B)

(C) $500 (C)

(D) (D)

WITNESS

ARRESTING OFFICER	BADGE NO.	SEARCHING OFFICER	BOOKING OFFICER
L.V.HAYES M.D.HARDING 157 4-1	135	JOANNE ALLEN	J.M.WHALEY

DATE AND TIME TO APPEAR IN COURT	PROPERTY SIGNED FOR BY	DEFENSE ATTORNEY
21 APR 69 8:30A. M		

PRISONER RELEASED ON	IN CARE OF	TIME	CONTINUED DATE
		M	4-30

DATE	BY (SIGNATURE)	ABOVE BOND DELIVERED TO ME

PROPERTY TAKEN FROM PRISONER (INCLUDING AUTOS, YEAR, MAKE, TAG) NARRATIVE

$4. CASH, NECKLACE, RXXH RING, B.C. PILLS SGT. HODGES.. 5-8 AM
PURSE AND CONTENTS...

TOTAL BOND$500.

MT INDEX, PRINT

JCSO P-002 (REV 10-68)

11 17150

10

TRANSCRIPT OF RECORD OF DOCKET BOOK 1 PAGE 06171 (1969) CASE

In the Municipal Court of the City of Jacksonville, Duval County

State of Florida

THE CITY OF JACKSONVILLE

vs. WF 23

Margaret M. Papachristou
Defendant

CHARGE

Vagrancy, Prowling by Auto

Defendant arrested by officer H. Harding & L.V. Hayes *The Chief of Police took from the defendant* ..... *Dollars, as security for his appearance before the City Court. Said defendant being called for trial on the* ..... *day of* ..... *and not answering or appearing, IT IS HEREBY ORDERED AND ADJUDGED, That the said bond be estreated, and thereupon it is considered and adjudged that the City of Jacksonville recover of and from the said* ..... *the sum of* ..... *Dollars, for which let execution issue.*

Attest:

..... *(Recorder)* .....
Clerk Municipal Court — Judge Municipal Court

Defendant being arraigned for trial on the 21st *day of* April

Continued until April 30th, 1969 May 8th, 1969

and entered a plea of Not *guilty to the above charge.*

Names of Witnesses Sworn for the Prosecution

H. Harding & L.V. Hayes

Names of Witnesses Sworn for the Defendant

Unknown

Received of the Recorder .....

Return of $ .....

Bondsman

SATISFACTION OF JUDGMENT
ASSESSING FINE

Jacksonville, Fla., ...

RECEIVED the sum of ..... *Dollars in satisfaction of this judgment.*

.....

After hearing the evidence and duly considering the same, the Court finds the defendant Margaret M. Papachristou *guilty of the charge; it is therefore considered and adjudged by the Court that the defendant is sentenced*

To imprisonment in the city jail for a term of 15 Days *days, and is so committed.*

To pay a fine of ..... *Dollars, forthwith, and default whereof being*

The Chief of Police took from the defendant _____ Dollars, as security for his appearance before the City Court. Said defendant being called for trial on the _____ day of _____ and not answering or appearing, IT IS HEREBY ORDERED AND ADJUDGED, That the said bond be estreated, and thereupon it is considered and adjudged that the City of Jacksonville recover of and from the said _____ the sum of _____ Dollars, for which let execution issue.

Attest:

_____ (Recorder) _____
Clerk Municipal Court — Judge Municipal Court

Defendant being arraigned for trial on the 21st day of April,
Continued until April 30th, 1969 May 8th, 1969

and entered a plea of Not guilty to the above charge.

Names of Witnesses Sworn for the Prosecution

H. Harding & L. V. Hayes

Names of Witnesses Sworn for the Defendant

Unknown

Received of the Recorder _____

Return of $ _____

_____
Bondsman

SATISFACTION OF JUDGMENT
ASSESSING FINE

Jacksonville, Fla., _____

RECEIVED the sum of _____ Dollars in satisfaction of this judgment.

_____

After hearing the evidence and duly considering the same, the Court finds the defendant Margaret M. Papachristou guilty of the charge; it is therefore considered and adjudged by the Court that the defendant is sentenced

To imprisonment in the city jail for a term of 15 Days days, and is so committed.

To pay a fine of _____ Dollars, forthwith, and default whereof being made, it is considered and adjudged by the Court that the said defendant stand committed to the city jail until said fine is paid or satisfied according to law.

S. Morgan Slaughter
Clerk of Circuit and Municipal Courts

Attest:

By Cleo W. Thomas _____ (Recorder) _____
Deputy Clerk Municipal Court — Judge Municipal Court

From the above judgement and sentence the said _____ appealed to the Circuit Court in and for Duval County, on the _____ day of _____ and gave bond with _____ sureties, in the sum of _____ Dollars, as required by law, which was approved.

Attest:

_____ (Recorder) _____
Clerk Municipal Court — Judge Municipal Court.

2

[illegible] Clerk of Appellate Courts [illegible]

5

LAST NAME: CALLOWAY | FIRST NAME: BETTY | MIDDLE: JEAN | (ALIASES)

DAY OF WEEK: SUN.

ADDRESS: 144 SHERRY AVE.

DATE: 20APR69 | TIME BOOKED: 4:10A.M.

ARREST NUMBER: C2172

RACE	SEX	AGE	DATE OF BIRTH	PLACE OF BIRTH	OCCUPATION	NATIONALITY
W	F	22	12-3-45	JAX. FLA.	OCC. THERAPY	AMER

HEIGHT	WEIGHT	BUILD	HAIR	EYES	COMP.	SCARS, TATTOOS, AMPUTATIONS
5-2	135	MED	BLOND	BLUE	FAIR	

DESCRIPTION AND FINGERPRINTS BY: J.W. Rason | TIME: 4:37A.M.

WHERE ARRESTED: U.S. #1 SOUTH OF SOUTEL DRIVE. | BEAT NO.: 1115 | TIME ARRESTED: 2:20A.M.

TRANSPORTED BY: CAR 1108 | SOCIAL SECURITY NO.: 4 | JPD ID NO.: 188-314 | HOW ARREST MADE: ON VIEW X CALL ☐ WARRANT ☐

COMPLAINANT: H.D. HARDING & L.V. HAYES | ADDRESS: JPD | PHONE:

OFFENSES CHARGED (DRIVER'S LICENSE NUMBER WHERE INDICATED) | DISPOSITION

(A) VAGRANCY, PROWLING BY AUTO. | BOND $500. (A) | 10 Days

Appeal Bond $500

(B) | (B) | (3)

(C) | (C)

(D) | (D)

WITNESS

ARRESTING OFFICER: L.V. HAYES 157 / H.D. HARDING 157 | SEARCHING OFFICER: JOANNE ALLEN | BOOKING OFFICER: J. WHALEY

DATE AND TIME TO APPEAR IN COURT: 21 APR 69 9:00AM | PROPERTY SIGNED FOR BY: | DEFENSE ATTORNEY: Lambros

PRISONER RELEASED ON | IN SUM OF | TIME M | CONTINUED DATE

DATE | BY (SIGNATURE) | ABOVE BOND DELIVERED TO ME

PROPERTY TAKEN FROM PRISONER (INCLUDING AUTOS, YEAR, MAKE, TAG) NARRATIVE

NECKLACE, 3 RINGS.. PURSE & CONTENTS,, S/ CT. HODGES

1968 CAMARO STORED AT JIMMIES GARAGE.. 5-8

RT INDEX PRINT

TOTAL BOND $500.

FORM P-008 (REV 10-68)

Refunded 5-9-69 ck. # 808

12

CASE

TRANSCRIPT OF RECORD FROM DOCKET BOOK 1 PAGE 6172 (1969)

In the Municipal Court of the City of Jacksonville, Duval County

State of Florida

THE CITY OF JACKSONVILLE

vs. WF 22

Betty Jean Calloway
Defendant

CHARGE

Vagrancy - Prowling by Auto

Defendant arrested by officer H.D. Harding *The Chief of Police took from the defendant* $50C.00 AP Arflin *Dollars, as security for his appearance before the City Court. Said defendant being called for trial on the* _____ *day of* _____ *and not answering or appearing, IT IS HEREBY ORDERED AND ADJUDGED, That the said bond be estreated, and thereupon it is considered and adjudged that the City of Jacksonville recover of and from the said* _____ *the sum of* _____ *Dollars, for which let execution issue.*

Attest:

_____ *(Recorder)* _____
Clerk Municipal Court — Judge Municipal Court

Defendant being arraigned for trial on the 21st *day of* April 1969.
Continued until April 30th, May 8th, 1969

and entered a plea of Not *guilty to the above charge.*

Names of Witnesses Sworn for the Prosecution

H.D. Harding

Names of Witnesses Sworn for the Defendant

Unknown

Received of the Recorder _____

Return of $ _____

_____
Bondsman

SATISFACTION OF JUDGMENT ASSESSING FINE

Jacksonville, Fla., _____

RECEIVED the sum of _____ *Dollars in satisfaction of this judgment.*

_____

After hearing the evidence and duly considering the same, the Court finds the defendant Betty Jean Calloway *guilty of the charge; it is therefore considered and adjudged by the Court that the defendant is sentenced*

To imprisonment in the city jail for a term of 10 days S/S *days, and is so committed.*

To pay a fine of _____ *Dollars, forthwith, and default whereof being*

from the defendant $500.00 AP Arflin Dollars, as security for his appearance before the City Court. Said defendant being called for trial on the _____ day of _____ and not answering or appearing, IT IS HEREBY ORDERED AND ADJUDGED, That the said bond be estreated, and thereupon it is considered and adjudged that the City of Jacksonville recover of and from the said _____ the sum of _____ Dollars, for which let execution issue.

Attest:

_____ (Recorder) _____
Clerk Municipal Court — Judge Municipal Court

Defendant being arraigned for trial on the 21st day of April 1969,
Continued until April 30th, May 8th, 1969

and entered a plea of Not guilty to the above charge.

Names of Witnesses Sworn for the Prosecution

H.D. Harding

Names of Witnesses Sworn for the Defendant

Unknown

Received of the Recorder _____

Return of $ _____

_____
Bondsman

SATISFACTION OF JUDGMENT
ASSESSING FINE

Jacksonville, Fla., _____

RECEIVED the sum of _____ Dollars in satisfaction of this judgment.

_____

After hearing the evidence and duly considering the same, the Court finds the defendant Betty Jean Calloway guilty of the charge; it is therefore considered and adjudged by the Court that the defendant is sentenced

To imprisonment in the city jail for a term of 10 days S/S days, and is so committed.

To pay a fine of _____ Dollars, forthwith, and default whereof being made, it is considered and adjudged by the Court that the said defendant stand committed to the city jail until said fine is paid or satisfied according to law.

S. Morgan Slaughter
Clerk of Circuit and Municipal Courts

Attest:

By Cecil W Thomas (Recorder) _____
Deputy Clerk Municipal Court — Judge Municipal Court

From the above judgement and sentence the said _____ appealed to the Circuit Court in and for Duval County, on the _____ day of _____ and gave bond with _____ sureties, in the sum of _____ Dollars, as required by law, which was approved.

Attest:

_____ (Recorder) _____
Clerk Municipal Court — Judge Municipal Court

Appellate Return filed with Clerk of Appellate Court _____ A. D. _____

4

ARREST NUMBER C3168 1

LAST NAME / FIRST NAME / MIDDLE (ALIASES)			DAY OF WEEK
MELTON, EUGENE EDDIE			SUNDAY

ADDRESS	DATE	TIME BOOKED
740 W ORANGE STREET	20APR69	3:45A M

RACE	SEX	AGE	DATE OF BIRTH	PLACE OF BIRTH	OCCUPATION	NATIONALITY
N	M	24	19AUG44	BALTIMORE, MD	STUDENT	AMER

HEIGHT	WEIGHT	BUILD	HAIR	EYES	COMP.	SCARS, TATTOOS, AMPUTATIONS
6'4"	195	[illegible]	Bk.	Brn	Brn	NR

DESCRIPTION AND FINGERPRINTS BY	TIME
[illegible signature]	3:50 A M

WHERE ARRESTED	BEAT NO.	TIME ARRESTED
US # 1 & SOUTEL DRIVE	1115	2:20A M

TRANSPORTED BY	SOCIAL SECURITY NO.	JPD ID NO.	HOW ARREST MADE
1108		188-308	ON VIEW ☒ CALL ☐ WARRANT ☐

COMPLAINANT / ADDRESS / PHONE

OFFENSES CHARGED (DRIVER'S LICENSE NUMBER WHERE INDICATED) / DISPOSITION

(A) VAGRANCY-PROWLING BY AUTO BOND $ 500.00 , NC. (A) 10 Days

(B) [illegible handwriting] $5cc (B)

(C) (C)

(D) (D)

WITNESS

ARRESTING OFFICER	BADGE NO.	SEARCHING OFFICER	BOOKING OFFICER
H HARDY	157	DEMERS	JOHNSTON

DATE AND TIME TO APPEAR IN COURT	PROPERTY SIGNED FOR BY	DEFENSE ATTORNEY
21 APRIL 69 8:30 A.M. M		[illegible]

PRISONER RELEASED ON	IN SUM OF	TIME	CONTINUED DATE
		M	4-30

DATE	BY (SIGNATURE)	ABOVE BOND DELIVERED TO ME
	[illegible]	

PROPERTY TAKEN FROM PRISONER (INCLUDING AUTOS, YEAR, MAKE, TAG) NARRATIVE

CHECK, WATCH 2 RINGS

8 P.M.
5-8

RT. INDEX PRINT

FORM P-008 (REV 10-66)

CASE

TRANSCRIPT OF RECORD FROM DOCKET BOOK 1 PAGE 6168 (1969)

In the Municipal Court of the City of Jacksonville, Duval County

State of Florida

THE CITY OF JACKSONVILLE

vs. NM 24

Eugene E. Melton

Defendant

CHARGE

Vagrancy - Prowling by Auto

Defendant arrested by officer H. Hardy *The Chief of Police took from the defendant* ..... *Dollars, as security for his appearance before the City Court. Said defendant being called for trial on the* ..... *day of* ..... *and not answering or appearing, IT IS HEREBY ORDERED AND ADJUDGED, That the said bond be estreated, and thereupon it is considered and adjudged that the City of Jacksonville recover of and from the said* ..... *the sum of* ..... *Dollars, for which let execution issue.*

Attest:

..... (Recorder) .....

Clerk Municipal Court — Judge Municipal Court

Defendant being arraigned for trial on the 21st *day of* April 1969

Continued until April 30th, May 8th, 1969

and entered a plea of Not *guilty to the above charge.*

Names of Witnesses Sworn for the Prosecution

H. Hardy

Names of Witnesses Sworn for the Defendant

Unknown

Received of the Recorder .....

Return of $ .....

Bondsman

SATISFACTION OF JUDGMENT ASSESSING FINE

Jacksonville, Fla., ...

RECEIVED the sum of ..... Dollars *in satisfaction of this judgment.*

.....

After hearing the evidence and duly considering the same, the Court finds the defendant Eugene E. Melton *guilty of the charge; it is therefore considered and adjudged by the Court that the defendant is sentenced*

To imprisonment in the city jail for a term of 10 Days S/S *days, and is so committed.*

To pay a fine of ..... *Dollars, forthwith, and default whereof being*

Defendant arrested by officer _____ The Chief of Police took from the defendant _____ Dollars, as security for his appearance before the City Court. Said defendant being called for trial on the _____ day of _____ and not answering or appearing, IT IS HEREBY ORDERED AND ADJUDGED, That the said bond be estreated, and thereupon it is considered and adjudged that the City of Jacksonville recover of and from the said _____ the sum of _____ Dollars, for which let execution issue.

Attest:

_____ (Recorder) _____
Clerk Municipal Court — Judge Municipal Court

Defendant being arraigned for trial on the 21st day of April 1969

Continued until April 30th, May 8th, 1969

and entered a plea of Not guilty to the above charge.

Names of Witnesses Sworn for the Prosecution

H. Hardy

Names of Witnesses Sworn for the Defendant

Unknown

Received of the Recorder _____

Return of $ _____

_____
Bondsman

SATISFACTION OF JUDGMENT
ASSESSING FINE

Jacksonville, Fla., _____

RECEIVED the sum of _____ Dollars in satisfaction of this judgment.

_____

After hearing the evidence and duly considering the same, the Court finds the defendant Eugene E. Melton guilty of the charge; it is therefore considered and adjudged by the Court that the defendant is sentenced

To imprisonment in the city jail for a term of 10 Days S/S days, and is so committed.

To pay a fine of _____ Dollars, forthwith, and default whereof being made, it is considered and adjudged by the Court that the said defendant stand committed to the city jail until said fine is paid or satisfied according to law.

S. Morgan Slaughter
Clerk of Circuit and Municipal Courts

Attest:

By Ceal W. Thomas (Recorder) _____
Deputy Clerk Municipal Court — Judge Municipal Court

From the above judgement and sentence the said _____ appealed to the Circuit Court in and for Duval County, on the _____ day of _____ and gave bond with _____ sureties, in the sum of _____ Dollars, as required by law, which was approved.

Attest:

_____ (Recorder) _____
Clerk Municipal Court — Judge Municipal Court

Return filed with Clerk of Appellate Court _____ A. D.

6

15

LAST NAME: JOHNSON, LEONARD (NMN) | FIRST NAME | MIDDLE | (ALIASES) | DAY OF WEEK: SUNDAY

ADDRESS: 1030 MADISON STREET | DATE: 20APR69 | TIME BOOKED: 9:46A M

RACE	SEX	AGE	DATE OF BIRTH	PLACE OF BIRTH	OCCUPATION	NATIONALITY
N	M	24	15MAY44	JACKSONVILLEFLA	TOWMOTOR OPRERATOR	AMER

HEIGHT	WEIGHT	BUILD	HAIR	EYES	COMP.	SCARS, TATTOOS, AMPUTATIONS
6-4	190	Tall	Bk.	Brn	Blk.	NR

DESCRIPTION AND FINGERPRINTS BY: Maher | TIME: 4:00A M

ARREST NUMBER: 69169

WHERE ARRESTED: U S 1 & SOUTH OF SOUTEL DRIVE | BEAT NO.: 1115 | TIME ARRESTED: 2:20A M

TRANSPORTED BY: 1108 | SOCIAL SECURITY NO. | JPD ID NO.: 186-307 | HOW ARREST MADE: ON VIEW ☐ CALL ☐ WARRANT ☐

COMPLAINANT | ADDRESS | PHONE

OFFENSES CHARGED (DRIVER'S LICENSE NUMBER WHERE INDICATED) | DISPOSITION

(A) VAGRANCY- PROWLING BY AUTO BOND $500.00 NL | (A) 10 days

(B) | (B)

(C) | (C)

(D) | (D)

WITNESS: L HAYES JPD

ARRESTING OFFICER / BADGE NO.	SEARCHING OFFICER	BOOKING OFFICER
H HARDING 157	DEMERS	JOHNSTON

DATE AND TIME TO APPEAR IN COURT	PROPERTY SIGNED FOR BY	DEFENSE ATTORNEY
21 APRIL 69 8:30 A M		

PRISONER RELEASED ON	IN SUM OF	TIME	CONTINUED DATE
		M	4-30

DATE | BY (SIGNATURE) | ABOVE BOND DELIVERED TO ME

PROPERTY TAKEN FROM PRISONER (INCLUDING AUTOS, YEAR, MAKE, TAG) NARRATIVE

NONE

8 AM
5-8

RT INDEX PRINT

FORM P-002 (REV 10-65)

CASE

TRANSCRIPT OF RECORD FROM DOCKET BOOK 1 PAGE 6169 (1969)

In the Municipal Court of the City of Jacksonville, Duval County

State of Florida

THE CITY OF JACKSONVILLE

vs. NM 24

Leonard Johnson
Defendant

CHARGE

Vagrancy - Prowling by Auto

Defendant arrested by officer H. Hayes *The Chief of Police took from the defendant* _____ *Dollars, as security for his appearance before the City Court. Said defendant being called for trial on the* _____ *day of* _____ *and not answering or appearing, IT IS HEREBY ORDERED AND ADJUDGED, That the said bond be estreated, and thereupon it is considered and adjudged that the City of Jacksonville recover of and from the said* _____ *the sum of* _____ *Dollars, for which let execution issue.*

Attest:

_____ *(Recorder)* _____
Clerk Municipal Court — Judge Municipal Court

Defendant being arraigned for trial on the 21st *day of* April 1969.

Continued until April 30th, May 8th, 1969

and entered a plea of Not *guilty to the above charge.*

Names of Witnesses Sworn for the Prosecution

H. Hayes

Names of Witnesses Sworn for the Defendant

Unknown

Received of the Recorder _____

Return of $ _____

Bondsman

SATISFACTION OF JUDGMENT
ASSESSING FINE

Jacksonville, Fla., _____

RECEIVED the sum of _____ *Dollars in satisfaction of this judgment.*

_____

After hearing the evidence and duly considering the same, the Court finds the defendant Leonard Johnson *guilty of the charge; it is therefore considered and adjudged by the Court that the defendant is sentenced*

To imprisonment in the city jail for a term of 10 Days S/S *days, and is so committed.*

from the defendant _____ Dollars, as security for his appearance before the City Court. Said defendant being called for trial on the _____ day of _____ and not answering or appearing, IT IS HEREBY ORDERED AND ADJUDGED, That the said bond be estreated, and thereupon it is considered and adjudged that the City of Jacksonville recover of and from the said _____ the sum of _____ Dollars, for which let execution issue.

Attest:

_____ (Recorder) _____
Clerk Municipal Court — Judge Municipal Court

Defendant being arraigned for trial on the 21st day of April 1969.

Continued until April 30th, May 8th, 1969

and entered a plea of Not guilty to the above charge.

Names of Witnesses Sworn for the Prosecution

H. Hayes

Names of Witnesses Sworn for the Defendant

Unknown

Received of the Recorder _____

Return of $ _____

_____
Bondsman

SATISFACTION OF JUDGMENT
ASSESSING FINE

Jacksonville, Fla., _____

RECEIVED the sum of _____ Dollars in satisfaction of this judgment.

_____

After hearing the evidence and duly considering the same, the Court finds the defendant Leonard Johnson guilty of the charge; it is therefore considered and adjudged by the Court that the defendant is sentenced

To imprisonment in the city jail for a term of 10 Days S/S days, and is so committed.

To pay a fine of _____ Dollars, forthwith, and default whereof being made, it is considered and adjudged by the Court that the said defendant stand committed to the city jail until said fine is paid or satisfied according to law.

S. Morgan Slaughter
Clerk of Circuit and Municipal Courts

Attest:

By Carol W Thomas (Recorder) _____
Deputy Clerk Municipal Court — Judge Municipal Court

From the above judgement and sentence the said _____ appealed to the Circuit Court in and for Duval County, on the _____ day of _____ and gave bond with _____ sureties, in the sum of _____ Dollars, as required by law, which was approved.

Attest:

_____ (Recorder) _____
Clerk Municipal Court — Judge Municipal Court

Bond Papers filed with Clerk of Appellate Court _____ A. D. _____

5

17

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

No. 4806-AP
4838-AP
4836-AP
4555-AP
4854-AP
4845-AP

HUGH BROWN; JIMMY LEE SMITH, HENRY EDWARD HEATH, MARGARET PAPACHRISTOU, BETTY JEAN CALLOWAY, EUGENE E. MELTON, LEONARD JOHNSON, and, THOMAS CAMPBELL, APPELLANTS

vs.

CITY OF JACKSONVILLE, APPELLEE

ORDER AFFIRMING

Each of the above causes is an appeal from a conviction in the Municipal Court for the City of Jacksonville. Each appellant was convicted of vagrancy under Section 26-57, Ordinance Code, City of Jacksonville. All of these causes were consolidated for purposes of appeal proceedings, and a joint brief was filed by appellants. Appellants contend that Section 26-57, Ordinance Code, City of Jacksonville violates the Constitutions of the State of Florida and the United States of America. The contention made by the appellants was decided adversely to them in *Johnson* vs. *State*, 202 So.2d 852 (Fla. 1967). This Court being bound by the ruling in *Johnson* vs. *States*, it is upon consideration

ORDERED that the judgment and conviction entered in the Municipal Court against each appellant is affirmed.

DONE and ORDERED at Jacksonville, Florida, this 28th day fo November, 1969.

/s/ Marion W. Gooding
Circuit Judge

IN THE DISTRICT COURT OF APPEAL
IN AND FOR THE FIRST DISTRICT OF FLORIDA

No. M-488

HUGH BROWN, JIMMY LEE SMITH, HENRY EDWARD HEATH, MARGARET PAPACHRISTOU, BETTY JEAN CALLOWAY, EUGENE E. MELTON, LEONARD JOHNSON, and, THOMAS CAMPBELL, PETITIONERS

vs.

CITY OF JACKSONVILLE, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT FOR DUVAL COUNTY, FLORIDA

TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT OF FLORIDA:

Petitioners, Hugh Brown, Jimmy Lee Smith, Henry Edward Heath, Margaret Papachristou, Betty Jean Calloway, Eugene E. Melton, Leonard Johnson and Thomas Campbell, present this, their petition for a writ of certiorari and state:

1. Petitioners seek to have reviewed an order of the Circuit Court for Duval County, Florida dated November 28, 1969, a copy of which is attached hereto as Exhibit A, affirming convictions entered against petitioners in the Municipal Court for the City of Jacksonville, Florida.

2. This petition is presented under and pursuant to Article 5, Section 5 of the Florida Constitution and Rule 4.5c of the Florida Appellate Rules.

3. This petition is accompanied by a certified transcript of the records of proceedings in the trial court (the Municipal Court for the City of Jacksonville) and a supporting brief.

4. The following are the facts of the case:

Petitioners were all convicted in the Municipal Court for the City of Jacksonville for the offense of vagrancy

in violation of Jacksonville Municipal Ordinance, § 26-57 (the Jacksonville vagrancy ordinance). The text of the ordinance is as follows:

> "Sec. 26-57. Vagrants.
>
> Rogues and vagabonds, or dissolute persons who go about begging, common gamblers, persons who use juggling or unlawful games or plays, common drunkards, common night walkers, thieves, pilferers, or pick-pockets, traders in stolen property, lewd, wanton and lascivious persons, keepers of gambling places, common railers and brawlers, persons wandering or strolling around from place to place without any lawful purpose or object, habitual loafers, disorderly persons, persons neglecting all lawful business and habitually spending their time by frequenting houses of ill fame, gaming houses or places where alcoholic beverages are sold or served, persons able to work but habitually living upon the earnings of their wives or minor children, shall be deemed vagrants and, upon conviction in the Municipal Court shall be punished as provided for class D offenses. (Code 1942, ch. 33, § 42; Code 1953, § 27-48)."

Petitioners appealed their separate convictions to the Circuit Court for Duval County, Florida, attacking the constitutionality of the vagrancy ordinance. In the Circuit Court the appeals of all the petitioners were consolidated for the purposes of appeal proceedings in that court. This petition involves only the constitutionality of the ordinance on its face, and no detailed statement of the facts of each case is required for disposition of the challenge raised by petitioners.

5. The point of law before the Circuit Court was whether the Jacksonville vagrancy ordinance is constitutional under the Constitutions of the State of Florida and the United States of America. The case against petitioner, Hugh Brown, also raised the question of his right to resist an illegal arrest.

Circuit Judge Marion W. Gooding ruled that the vagrancy ordinance is constitutional, relying upon the deci-

sion of the Supreme Court of Florida in *Johnson* vs. *State*, 202 So.2d 852 (Fla. 1967), and the convictions of all appellants were affirmed.

6. The order of the Circuit Court constitutes a serious departure from the essential requirements of the law rendering that order illegal and void and further is violative of Sections 1, 8, 11, 12, 16 and 22 of the Declaration of Rights of the Constitution of the State of Florida and the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States.

WHEREFORE, petitioners request this court to grant a writ of certiorari and enter its order quashing the decision and order hereby sought to be reviewed and granting such other and further relief as shall seem right and proper to the court.

DATZ & JACOBSON

By /s/ Samuel S. Jacobson
SAMUEL S. JACOBSON
Attorney for Petitioners
820 First Bank & Trust Building
Jacksonville, Florida

I DO CERTIFY that a copy hereof was furnished to the Office of the City Attorney, City Hall, Jacksonville, Florida, by mail, this 26th day of December, 1969.

/s/ Samuel S. Jacobson
Attorney

IN THE DISTRICT COURT OF APPEAL
IN AND FOR THE FIRST DISTRICT OF FLORIDA

No. M-488

HUGH BROWN, JIMMY LEE SMITH, HENRY EDWARD HEATH, MARGARET PAPACHRISTOU, BETTY JEAN CALLOWAY, EUGENE E. MELTON, LEONARD JOHNSON; and, THOMAS CAMPBELL, PETITIONERS

vs.

CITY OF JACKSONVILLE, RESPONDENT

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

DATZ & JACOBSON
Attorney for Petitioners
320 First Bank & Trust
Building
Jacksonville, Florida

TOPICAL INDEX

CITATION OF AUTHORITIES

Cases

STATUTES AND ORDINANCES

STATEMENT OF CASE

Petitioners were all convicted of vagrancy in the Municipal Court for the City of Jacksonville pursuant to Section 26-57 of the Jacksonville Municipal Code. Section 26-57 reads as follows:

> "Sec. 26-57. Vagrants.
>
> Rogues and vagabonds, or dissolute persons who go about begging, common gamblers, persons who use juggling or unlawful games or plays, common drunkards, common night walkers, thieves, pilferers or pick-pockets, traders in stolen property, lewd, wanton and lascivious persons, keepers of gambling places, common railers and brawlers, persons wandering or strolling around from place to place without any lawful purpose or object, habitual loafers, disorderly persons, persons neglecting all lawful business and habitually spending their time by frequenting houses of ill fame, gaming houses or places where alcoholic beverages are sold or served, persons able to work but habitually living upon the earnings of their wives or minor children, shall be deemed vagrant, and, upon conviction in the Municipal Court shall be punished as provided for class D offenses. (Code 1942, ch. 33, § 42; Code 1953, § 27-48.)"

Although each was charged separately in the Municipal Court, there were basically only five cases. In chronological order the cases were as follows:

1. Hugh Brown vs. City of Jacksonville, date of alleged offense—January 29, 1969.
2. Jimmy Lee Smith vs. City of Jacksonville, date of alleged offense—February 20, 1969.
3. Henry Edward Heath vs. City of Jacksonville, date of alleged offense—March 18, 1969.
4. Thomas Campbell vs. City of Jacksonville, date of alleged offense—April 18, 1969.
5. Margaret Papachristou, Betty Jean Calloway, Eugene E. Melton and Leonard Johnson vs. City of Jacksonville, date of alleged offense—April 20, 1969.

In the Circuit Court the cases were consolidated for appeal because each case involved basically a challenge to the constitutionality of the Jacksonville vagrancy ordinance. Petitioner Hugh Brown's case also involved a conviction and sentence for resisting arrest basically hinging on the constitutionality of his arrest.

Circuit Judge Marion W. Gooding ruled that the Jacksonville vagrancy ordinance is constitutional, basing his ruling upon the decision of the Florida Supreme Court in *Johnson* vs. *State*, 202 So.2d 852 (Fla. 1967).[1] Judge Gooding therefore affirmed the convictions of each petitioner; a copy of his order is attached hereto as Exhibit A.

POINTS INVOLVED

POINT ONE

The Vagrancy Ordinance of the City of Jacksonville Is Violative of Sections 1, 8, 11, 12, 16 and 22 of the Declaration of Rights of the Constitution of the State of Florida and the First, Fourth, Fifth, Sixth, Eights and Fourteenth Amendments of the Constitution of the United States.

POINT TWO

(presented only by the Hugh Brown case)

Hugh Brown Committed No Criminal Offense in Resisting An Unlawful, Unconstitutional Arrest.

ARGUMENT

POINT ONE

The Vagrancy Ordinance of the City of Jacksonville Is Violative of Sections 1, 8, 11, 12, 16 and 22 of the Declaration of Rights of the Constitution of the

---

[1] *Johnson vs. State, supra*, dealt with the Florida vagrancy statute, § 856.02, Florida Statutes. The Jacksonville vagrancy ordinance is, however, identical in substance and almost identical in wording to the Florida vagrancy statute.

State of Florida and the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the Constitution of the United States.

Petitioners contend that the Jacksonville vagrancy ordinance is unconstitutionally vague and indefinite and provides neither notice of the offense sought to be prescribed nor any ascertainable standard of guilty. They also contend that the ordinance on its face can be applied to patently non-criminal conduct and has insufficient relationship to criminality to justify classification as a criminal statute or the imposition of criminal penalties. In all these respects the ordinance violates the due process provisions of the Constitutions of the State of Florida and the United States of America and the provisions against cruel and inhuman punishment. Petitioners rely on *Lazarus* vs. *Faircloth*, 301 F.Supp. 266 (S.D. Fla. 1969); *Goldman* vs. *Knecht*, 295 F.Supp. 897 (D. Colo. 1969); *Landry* vs. *Daley*, 288 F.Supp. 200 (N.D. Ill. 1968); *Baker* vs. *Bindner*, 274 F.Supp. 658 (W.D. Ky. 1967); *Graham* vs. *State*, 447 P.2d 200 (Okla. Ct. Cr. App. 1969); *Fenster* vs. *Leary*, 229 N.E.2d 429 (N.Y. 1967); *Alegata* vs. *Commonwealth*, 231 N.E.2d 201 (Mass. 1967); and, *Parker* vs. *Municipal Judge of City of Las Vegas*, 427 P.2d 642 (Nev. 1967).

Petitioners further contend that the ordinance must be construed in light of its enforcement and utilization as an instrument for harassment and incarceration on suspicion alone. See *Shuttlesworth* vs. *City of Birmingham*, 382 U.S. 87 (1965); *Kelley* vs. *United States*, 298 F.2d 310 (D.C. Cir. 1961); *Landry* vs. *Daley*, 288 F. Supp. 200 (N.D. Ill. 1968); *State* vs. *Jones*, 2 Cr. L. Reporter 2498 (County Court for Jefferson County, Colo. 1968).

The ordinance also seeks to make criminal involuntary conditions of life based on such factors as economics, race and other involuntary circumstances and deprives persons subjected to it of equal protection of the law. See *Robinson* vs. *California*, 370 U.S. 660 (1962); *NAACP* vs. *Dutton*, 371 U.S. 415 (1963); *Driver* vs. *Hinnant*, 356 F.2d 761 (4th Cir. 1966); *Easter* vs. *District of Columbia*, 361 F.2d 50 (D.C. Cir. 1966).

The ordinance additionally violates the privilege granted in Florida and the United States against self-incrimination insofar as it requires people to offer an account of themselves. See *Miranda* vs. *Arizona*, 384 U.S. 436 (1966); and, *United States* vs. *LoBiondo*, 135 F.2d 130 (2nd Cir. 1943).

Petitioners acknowledge, however, that the Florida Supreme Court upheld the constitutionality of the Florida vagrancy statute in *Johnson* vs. *State*, 202 So.2d 852 (Fla. 1967). See also, *Headley* vs. *Selkowitz*, 171 So.2d 368 (Fla. 1965); *Hanks* vs. *State*, 195 So.2d 49 (3rd D.C.A. Fla. 1967); *Reeves* vs. *State*, 187 So.2d 403 (3rd D.C.A. Fla. 1966).

Petitioners submit, however, that the intervening interpretations cited herein with regard to the constitutional protection here in question justify departure from the previous Florida decisions listed above in the preceding paragraph.

POINT TWO

(presented only by the Hugh Brown case)

Hugh Brown Committed No Criminal Offense in Resisting An Unlawful, Unconstitutional Arrest.

For those reasons covered under Point One, the arrest of Hugh Brown was unlawful and unconstitutional. In addition, assuming the constitutionality of the Jacksonville ordinance, Brown's arrest was illegal because of the absence of any grounds or evidence to support the arrest.

Brown accordingly had a right to resist the arrest and to use such force as was reasonably necessary to effect his escape. *Alday* vs. *State*, 57 So.2d 333 (Fla. 1952); *Gay* vs. *State*, 3 So.2d 514 (Fla. 1941); *Roberson* vs. *State*, 29 So. 535 (Fla. 1901).

CONCLUSION

Wherefore the convictions of all the petitioners should be vacated and set aside.

Respectfully submitted,

DATZ & JACOBSON

By /s/ Samuel S. Jacobson
SAMUEL S. JACOBSON
Attorney for Petitioners
320 First Bank & Trust Building
Jacksonville, Florida

I DO CERTIFY that a copy hereof was furnished to the Office of the City Attorney, City Hall, Jacksonville, Florida, by mail, this 26th day of December, 1969.

/s/ Samuel S. Jacobson
Attorney

APPENDIX A

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

No. 4806-AP
4838-AP
4836-AP
4555-AP
4854-AP
4845-AP

HUGH BROWN, JIMMY LEE SMITH, HENRY EDWARD HEATH, MARGARET PAPACHRISTOU, BETTY JEAN CALLOWAY, EUGENE E. MELTON, LEONARD JOHNSON, and, THOMAS CAMPBELL, APPELLANTS

vs.

CITY OF JACKSONVILLE, APPELLEE

ORDER AFFIRMING

Each of the above causes is an appeal from a conviction in the Municipal Court for the City of Jacksonville. Each appellant was convicted of vagrancy under Section 26-57, Ordinance Code, City of Jacksonville. All of these causes were consolidated for purposes of appeal proceedings, and a joint brief was filed by appellants. Appellants contend that Section 26-57, Ordinance Code, City of Jacksonville violates the Constitutions of the State of Florida and the United States of America. The contention made by the appellants was decided adversely to them in *Johnson* vs. *State*, 202 So.2d 852 (Fla. 1967). This court being bound by the ruling in *Johnson* vs. *State*, it is upon consideration

ORDERED that the judgment and conviction entered in the Municipal Court against each appellant is affirmed.

DONE and ORDERED at Jacksonville, Florida, this 28th day of November, 1969.

/s/ Marion W. Gooding
Circuit Judge

IN THE DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

No. M-488

HUGH BROWN, JIMMY LEE SMITH, HENRY EDWARD HEATH, MARGARET PAPACHRISTOU, BETTY JEAN CALLOWAY, EUGENE E. MELTON, LEONARD JOHNSON and THOMAS CAMPBELL, PETITIONERS

vs.

CITY OF JACKSONVILLE, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT FOR DUVAL COUNTY, FLORIDA

BRIEF OF RESPONDENT

WILLIAM L. DURDEN
Special Counsel
DAVID U. TUMIN
Assistant Counsel

1300 City Hall
Jacksonville, Florida 32202
Attorneys for Respondent

INDEX

TABLE OF CITATIONS

Cases

Constitutional Provisions

Florida Statutes

STATEMENT OF THE CASE

Respondent accepts the statement of the case as set forth by petitioners.

POINT INVOLVED

Respondent respectfully rephrases petitioners' Points Involved to read as its following Point Involved:

> Whether or Not Common Law Certiorari Is Available to Review the Affirmance By the Court of Final Appellate Jurisdiction Where Said Court of Final Appellate Jurisdiction Proceeded Within Its Constitutional Jurisdiction and the Procedures Were Regular and According to the Essential Requirements of Law.

ARGUMENT

POINT INVOLVED

> Common Law Certiorari Is Not Available to Review the Order of Affirmance By the Circuit Court Wherein Said Court of Final Appellate Jurisdiction Under the Constitution Upheld the Validity of the Vagrancy Ordinance in Accord With Prior Decisions of the Supreme Court of Florida.

Respondent respectfully rephrases the petitioners' Points Involved in order to initially direct this Court's attention to the patent factor that the Court is without jurisdiction to consider the present cause because of the restricted nature of common law certiorari proceedings in this Court. As set forth by the petitioners, the convictions all stemmed for vagrancy under an ordinance of respondent, which ordinance is for all intents and purposes identical to Section 856.02, Florida Statutes. Said convictions were then appealed to the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, which Court has *final appellate jurisdiction* of all cases arising in municipal courts pursuant to Articles V, Section 6(3), Constitution of the State of Florida. Section

924.08(3), Florida Statutes, also clearly provides that appeals lie to circuit courts from municipal court cases.

As stated by this Court in *State* v. *Smith*, 118 So.2d 792 (1960), at page 795:

> "As to those cases where the Constitution affords final appellate jurisdiction in the circuit courts, *certiorari may not be used in this court for the purpose of securing a second appeal, nor to produce the merits for review on appeal. The writ may not be used to review and affirm or reverse the judgment of a circuit court made in the exercise of its final appellate jurisdiction*, but requires that the judgment be either quashed, or the writ of certiorari dismissed." (Emphasis supplied)

This Court continued and recognized that certiorari ". . . is a common law writ issuing in the sound judicial discretion of the court to an inferior court, not to take the place of an appeal, but to cause the entire record of the inferior court to be brought up in order that it may be determined from the face thereof whether the inferior court has exceeded its jurisdiction, or has not proceeded according to the essential requirements of law." The strict limitations of common law certiorari must preclude the petitioners from obtaining a second review of the identical issues so thoroughly reviewed by the Circuit Court in the exercise of its final appellate jurisdiction.

The Supreme Court of Florida in *Boyd* v. *County of Dade*, 123 So.2d 323, 326 (1960), specifically recognized that circuit courts have final appellate jurisdiction over all cases arising in municipal courts.

The present petitioners are now attempting to make the writ of certiorari serve the purpose of an ordinary appellate proceeding. Even the sparse record furnished this Court clearly indicates that the issue now being presented as to the validity of the vagrancy ordinance was carefully presented and carefully studied on appeal in the Circuit Court, with that body of final appellate jurisdiction concurring in the conclusion of the Supreme Court of Florida in *Johnson* v. *State*, 202 So.2d 852 (1967), wherein the Supreme Court of Florida had up-

held the validity and constitutionality of the vagrancy statute, Section 856.02, supra. Stated the Court in *Johnson* v. *State*:

> "We have considered the briefs, arguments and authorities cited and conclude the trial court correctly held Florida Statute, § 856.02, F.S.A. to be constitutional, see Headley v. Selkowitz, 171 So.2d 368, 12 A.L.R.3d 1443 (1965); City of St. Petersburg v. Calback, 114 So.2d 316 (Fla.App.2d 1959); State ex rel. Green v. Capehart, 138 Fla. 492, 189 So. 708 (1939). Appellant's conviction must be upheld, Rinehart v. State, 114 So.2d 487 (Fla.App.2d 1959), certiorari dismissed 365 U.S. 849, 81 S.Ct. 812, 5 L.Ed.2d 813 (1961); Sutherland v. State, 167 So.2d 236 (Fla.App.2d 1964), certiorari denied 173 So.2d 148 (1965)."

Petitioners acknowledge quite candidly that prior decisions have succinctly upheld the constitutionality of the Florida vagrancy statute. They frankly admit that they seek a new determination of the issue despite the well settled Florida approval of the vagrancy statute as against similar constitutional attacks.

Because of the limited jurisdiction of certiorari, it would appear that this cause is improperly before this Court as an attempt to make the writ of certiorari serve the purpose of an ordinary appellate proceeding, by gaining an impossible *second* appeal. Such utilization of certiorari has long been precluded under the rulings found in *Morris* v. *State*, 110 Fla. 95, 148 So. 182 (1933); *State* v. *Smith*, supra; *Des Rocher & Watkins Towing Co.* v. *Third Nat. Bank*, 106 Fla. 466, 143 So. 768 (1932); *Vanderpool* v. *Spruell*, 104 Fla. 347, 139 So. 892 (1932); and *Brinson* v. *Tharin*, 99 Fla. 696, 127 So. 313 (1930).

Moreover, when the appeal was taken, all questions that might have been raised were concluded by affirmance, according to well established rules of Florida appellate practice. See *Skipper* v. *Schumacher*, 118 Fla. 867, 160 So. 357 (1935), cert. denied, 296 U.S. 578, 56 S.Ct. 88, 80 L.Ed. 408; *Kinsey* v. *Davis*, 154 Fla. 889, 19 So.2d 323 (1944); *Hart* v. *State*, 149 Fla. 388, 5 So.

2d 866 (1942). This principle should logically apply to appeals to the Circuit Court, which court had final appellate jurisdiction of this cause under the state Constitution.

To review the final appeal to the Circuit Court would be to pit the judgment of this Court against that of the court having final appellate jurisdiction, a practice which the Constitution never contemplated nor provided for under the reasoning found in *American Nat. Bank of Jacksonville* v. *Marks Lumber & Hardware Co.*, 45 So.2d 336 (1950). From the aforesaid, the petitioners' issue should not be properly heard by this Court through a petition for writ of certiorari.

Moreover, it is a well settled rule of law in Florida that this Court is without jurisdiction on certiorari unless there is a showing to the lower court proceeded either without jurisdiction or *proceeded* beyond the essential requirements of law. See *American National Bank of Jacksonville* v. *Marks Lumber & Hardware Co.*, supra; *Benton* v. *State*, 74 Fla. 30, 76 So. 341 (1917). Such rule must logically govern in the District Court of Appeal as well as in the Supreme Court of Florida. The case of *Cacciatore* v. *State*, 147 Fla. 758, 3 So.2d 584 (1941), must preclude review by certiorari in the present cause wherein the Court stated at page 586:

> "It is settled law that the Supreme Court of Florida had power to review and quash on the common law writ of certiorari the orders and proceedings of inferior courts *when they proceed in a cause without jurisdiction, or when their procedure is essentially irregular and not according to the essential requirements of law and when no appeal or direct method of reviewing the order or proceedings exists.*" (Emphasis supplied) (citing cases)

It should be noted that the rule requires that the lower court must have *proceeded* in a cause without jurisdiction or that the lower court's procedure be essentially irregular and not according to the essential requirements of law. An additional qualification to the latter require-

ment is to the effect that no appeal or direct method of review of the order or proceedings exist. In the case at bar, there was an appeal and the lower court quite properly had jurisdiction; and the procedure followed therein was essentially quite proper in accordance with the necessary requirements of law.

Moreover, the Supreme Court of Florida in *Nation* v. *State*, 155 Fla. 858, 22 So.2d 219 (1945), discussed a similar issue as appears in the case at bar as to the proper use of a writ of certiorari. The Court therein recognized that certiorari was not to give a party a second appeal, but only to cause the record to be brought up in order that a superior court may determine from the *face of the record* whether the inferior court had exceeded its jurisdiction or had not *proceeded* in accordance with the essential requirements of law.

Moreover, petitioners overlook the long standing rule concerning certiorari found in *Morris* v. *State*, supra, that this Court on certiorari cannot quash a judgment *merely* because reversible error was committed. The Court continued and again stated that the error complained of must be something more than simply reversible error, in that it must be so flagrant as to constitute a departure from the essential requirements of law with respect to *procedural* steps necessary to be taken or followed in order to administer justice according to controlling and indispensable rules of law. The Supreme Court therein cited some of the authority upon which respondent has relied above.

Both the petition and the brief in support thereof further raise as a second question the sufficiency of evidence to sustain a conviction relating to one petitioner, Hugh Brown. Such overlooks the long standing rule that certiorari proceedings are not available to review alleged error in the admission of evidence or to review the sufficiency of the evidence as found in *Des Rocher* v. *Third Nat. Bank*, supra, and *Benton* v. *State*, supra. Thus, again, the record establishes the present attempt is beyond the jurisdictional limitations of common law certiorari review. Moreover, as pointed above, *Johnson* v.

State, supra, clearly reduces the contention as to the invalidity of the vagrancy ordinance to a nullity.

CONCLUSION

The petition for writ of certiorari should be dismissed, or alternatively, the judgment of the Circuit Court as the court of final appellate jurisdiction approved.

Respectfully submitted,

/s/ William L. Durden
WILLIAM L. DURDEN
Special Counsel

/s/ David U. Tumin
DAVID U. TUMIN
Assistant Counsel

CERTIFICATE OF SERVICE

I DO CERTIFY that a copy hereof has been furnished to Samuel S. Jacobson, Esquire, of Datz & Jacobson, 320 First Bank & Trust Building, Jacksonville, Florida, attorney for petitioners, by United States mail, this 22nd day of January, 1970.

/s/ David U. Tumin
Attorney

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA
JANUARY TERM, A. D. 1970

Case No. M-488

HUGH BROWN, JIMMY LEE SMITH, HENRY EDWARD HEATH, MARGARET PAPACHRISTOU, BETTY JEAN CALLOWAY, EUGENE E. MELTON, LEONARD JOHNSON and THOMAS CAMPBELL, PETITIONERS

vs.

CITY OF JACKSONVILLE, RESPONDENT

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND DISPOSITION THEREOF IF FILED

Opinion filed June 9, 1970.

On Petition for Writ of Certiorari; Original Jurisdiction.
Datz & Jacobson, Jacksonville; for Petitioners.

William L. Durden, Special Counsel, and David U. Tumin, Assistant Counsel; for Respondent.

RAWLS, J.

By petition for writ of certiorari, eight petitioners seek review of an order of the Circuit Judge affirming their convictions in the Jacksonville Municipal Court for violation of the vagrancy ordinance, to wit:

> Sec. 26-57. Vagrants.
>
> "Rogues and vagabonds, or dissolute persons who go about begging, common gamblers, persons who use juggling or unlawful games or plays, common drunkards, common night walkers, thieves, pilferers or pick-pockets, traders in stolen property, lewd, wanton and lascivious persons, keepers of gambling places, common railers and brawlers, persons wandering or strolling around from place to place with-

> out any lawful purpose or object, habitual loafers, disorderly persons, persons neglecting all lawful business and habitually spending their time by frequenting houses of ill fame, gaming houses or places where alcoholic beverages are sold or served, persons able to work but habitually living upon the earnings of their wives or minor children, shall be deemed vagrants and, upon conviction in the Municipal Court shall be punished as provided for class D offenses." (Code 1942, ch. 33, § 42; Code 1953, § 27-48).

The several appeals were consolidated in the Circuit Court where the constitutionality of the ordinance was the only issue for the eight petitioners, except that Petitioner Brown also raised the issue as to whether he had a right to resist arrest. The Circuit Judge found the ordinance constitutional, relying upon Johnson v. State, 202 So.2d 852 (Fla. 1967), and affirmed the convictions.

Petitioners' contention is based primarily upon Lazarus v. Faircloth, 301 F.Supp. 266 (S.D. Fla. 1969). They contend that this federal decision has in effect overruled the Florida Supreme Court's decision in Johnson v. State, supra, which upheld the constitutionality of Section 856.02, Florida Statutes, since the subject ordinance is in all material respects identical in verbiage to the statute. A decision of a Federal District Court, while persuasive if well reasoned, is not by any means binding on the courts of a state. The Supreme Court of Florida is the apex of the judicial system of the State of Florida, and its decisions are binding upon this court.

As to Brown's contention that no criminal offense is committed in resisting an unlawful and unconstitutional arrest, our conclusion as to the validity of the ordinance disposes of that contention.

Further, as ably argued by the City, first appellate jurisdiction of all cases arising in municipal courts is vested in the Circuit Court pursuant to provisions of Article V, Section 6(3), Constitution of the State of Florida. This Court in State v. Smith, 118 So.2d 792, 795 (Fla. App. 1st 1960), held:

> "As to those cases where the Constitution affords final appellate jurisdiction in the circuit courts, certiorari may not be used in this court for the purpose of securing a second appeal, nor to produce the merits for review on appeal. The writ may not be used to review and affirm or reverse the judgment of a circuit court made in the exercise of its final appellate jurisdiction, but requires that the judgment be either quashed, or the writ of certiorari dismissed."

Petitioners are obviously attempting to secure a second appeal by means of common law writ of certiorari to review the judgment of the Circuit Court which exercised its final appellate jurisdiction. The writ will issue only where the inferior court has exceeded its jurisdiction or has not proceeded according to the essential requirements of the law. The Circuit Court sitting as an appellate court did not exceed its jurisdiction and did not depart from the essential requirements of the law, but, on the contrary, properly followed the decision of the highest appellate court of this State, Johnson v. State, supra.

The petition for writ of certiorari is dismissed.

JOHNSON, Chief Judge, and SPECTOR, J., CONCUR.

MANDATE

From

DISTRICT COURT OF APPEAL OF FLORIDA FIRST DISTRICT

To the Honorable, the Judges of the Circuit Court for the Fourth Judicial Circuit of Florida. Greetings:

WHEREAS, Lately in the Circuit Court of The Fourth Judicial Circuit for the County of Duval in a cause therein styled:

Case Nos. 4806-AP, 4836-AP
4845-AP, 4555-AP
4854

CITY OF JACKSONVILLE

vs.

HUGH BROWN, ET AL.

the Orders of said Court was rendered November 28, 1969, as appears by inspection of the pertinent record of the said Court in said cause, which was brought into the District Court of Appeal of Florida, First District, by virtue of proceedings agreeable to the laws of said State in such case made and provided;

AND WHEREAS, the said cause came on to be heard before the said District Court, in consideration whereof, on June 9, 1970, the said District Court rendered its opinion and judgment in said cause as per copy thereof hereto attached and made a part hereof, therefore:

It is Ordered by the Court that the _____ do have and recover of and from the _____ _____ costs in this behalf expended herein taxed at Twenty Five Dollars, and that all costs shall be taxed in the said lower court; and

YOU ARE HEREBY COMMANDED, That such further proceedings be had in said cause as according to

right, justice, the judgment of said Court, and the laws of the State of Florida, ought to be had, the said Orders of said Circuit Court notwithstanding.

WITNESS, The Honorable Dewey M. Johnson, Chief Judge of said District Court, and seal of said Court at Tallahassee, this 25th day of June, 1970. [SEAL]

/s/ Raymond E. Rhodes
Clerk District Court of Appeal
of Florida, First District

SUPREME COURT OF THE UNITED STATES

No. 5983, October Term, 1970

MARGARET PAPACHRISTOU, ET AL., PETITIONERS

v.

CITY OF JACKSONVILLE

On petition for writ of Certiorari to the District Court of Appeal of the State of Florida, First District.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

June 14, 1971

☆ U.S. GOVERNMENT PRINTING OFFICE: 1971 441650 121

IN THE

Supreme Court of the United States

No. 70-5030

MARGARET PAPACHRISTOU, ET AL.,

Petitioners,

v.

CITY OF JACKSONVILLE

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT OF FLORIDA

PETITIONERS' BRIEF

SAMUEL S. JACOBSON
DATZ, JACOBSON & DUSEK
320 Southeast First Bank Building
Jacksonville, Florida 32202
Counsel for Petitioners

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes and Ordinances:

Books, Reports and Miscellaneous Materials:

IN THE SUPREME COURT OF THE UNITED STATES

No. 70-5030

MARGARET PAPACHRISTOU, ET AL.,

Petitioners,

v.

CITY OF JACKSONVILLE

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL,
FIRST DISTRICT OF FLORIDA

PETITIONERS' BRIEF

OPINIONS BELOW

The order of conviction entered by the Jacksonville Municipal Court and the order of the Circuit Court for the Fourth Judicial Circuit of Florida affirming the convictions are unreported. The opinion of the District Court of Appeal, First District of Florida, is reported as *Brown v. City of Jacksonville,* 236 So.2d 141 (1st Dist. Fla. 1970).

JURISDICTION

The statutory authority for this court's jurisdiction is 28 U.S.C. 1257(3).

The judgment of the District Court of Appeal, First District of Florida was entered on June 9, 1970, and became final on June 29, 1970. By an order of Mr. Justice Black, entered on September 10, 1970, the time for filing this petition was extended to October 6, 1970.

QUESTION PRESENTED

Are the City of Jacksonville Vagrancy Ordinance and Florida Vagrancy Statute constitutional?

ORDINANCES, STATUTES, AND CONSTITUTIONAL PROVISIONS INVOLVED

Petitioners were convicted under Jacksonville Ordinance Code §26-57 (1965)[1] providing that:

> "Rogues and vagabonds, or dissolute persons who go about begging, common gamblers, persons who use juggling or unlawful games or plays, common drunkards, common night walkers, thieves, pilferers or pickpockets, traders in stolen property, lewd, wanton and lascivious persons, keepers of gambling places, common railers and brawlers, persons wandering or strolling around from place to place without any lawful purpose or object, habitual loafers, disorderly persons, persons neglecting all lawful business and habitually spending their time by frequenting houses of ill fame, gaming houses, or places where alcoholic beverages are sold or served, persons able to work but habitually living upon the earnings of their wives or minor children shall be deemed vagrants and,

[1] The Jacksonville vagrancy ordinance was recently renumbered to §330.107. It was also modernized by eliminating "juggling." The current ordinance is otherwise identical to the one under which petitioners were convicted.

upon conviction in the Municipal Court shall be punished as provided for Class D offenses."[2]

The Florida vagrancy statute (Florida Statutes § 856.02), also affects petitioners because of an assimilative crimes ordinance (Jacksonville Ordinance Code § 27-43), making the commission of any Florida misdemeanor a Class D offense against the City of Jacksonville.

> "Rogues and vagabonds, idle or dissolute persons who go about begging, common gamblers, persons who use juggling, or unlawful games or plays, common pipers and fiddlers, common drunkards, common night walkers, thieves, pilferers, traders in stolen property, lewd, wanton and lascivious persons, keepers of gambling places, common railers and brawlers, persons who neglect their calling or employment, or are without reasonably continuous employment or regular income and who have not sufficient property to sustain them, and misspend what they earn without providing for themselves or the support of their families, persons wandering or strolling around from place to place without any lawful purpose or object, habitual loafers, idle and disorderly persons, persons neglecting all lawful business and habitually spending their time by frequenting houses of ill fame, gaming houses or tippling shops, persons able to work but habitually living upon the earnings of their wives or minor children, and all able-bodied male persons over the age of eighteen years who are without means of support and remain in idleness, shall be deemed vagrants, and upon conviction, shall be subject to the penalty provided in § 856.03."[3]

---

[2]Class D offenses, when petitioners were convicted, were punishable by 90 days imprisonment, $500 fine, or both. Jacksonville Ordinance Code § 1-8 (1965). The maximum punishment has since been reduced to 75 days or $450 to avoid Federal right-to-counsel decisions. Jacksonville Ordinance Code 304.101 (1971).

[3]In its 1971 session, the Florida legislature eliminated the words "or tippling shops" from the statute. This was part of a new Comprehensive Alcoholism Prevention, Control and Treatment Act. (Chap. 71-132, 1971 Regular Session). The phrase "common drunkards" was inexplicably left untouched.

The following portions of the United States Constitution are relied upon:

Article I, § 8, Cl. 3:

> The Congress shall have the power to . . . regulate Commerce among the several States. . . .

Article IV, § 2, Cl. 1:

> The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Amendment 4:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

Amendment 5:

> * * * nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law.

Amendment 8:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment 14:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioners were all convicted of vagrancy in the Jacksonville Municipal Court.

There were five separate cases at the Municipal Court level—later consolidated on appeal. The separate cases were:

1. City of Jacksonville v. Margaret Papachristou, Betty Jean Calloway, Eugene E. Melton, and Leonard Johnson.
2. City of Jacksonville v. Jimmy Lee Smith.
3. City of Jacksonville v. Thomas Owen Campbell.
4. City of Jacksonville v. Henry Edward Heath.
5. City of Jacksonville v. Hugh Brown.

STATEMENT OF FACTS

The parties have stipulated to the following statement of facts for each separate case. The stipulated statements are based on stenographic transcripts of the Municipal Court trials. The transcripts are not reproduced in the Single Appendix but are included in the Record on file with the Clerk of this Court.

City of Jacksonville v. Margaret Papachristou, Betty Jean Calloway, Eugene E. Melton and Leonard Johnson

Papachristou, Calloway, Melton and Johnson were charged on April 20, 1969, with "vagrancy—prowling by auto." Papachristou and Calloway are white females; Melton and Johnson are negro males. (App. 10, 12, 14, 16)

Papachristou was a 23-year old enrollee in a job training program sponsored by the Florida State Employment Service at the Florida Junior College in Jacksonville. She was living with her parents while separated from her husband. (Papachristou Tr. 53-56).

Calloway was a 22-year old typing and shorthand teacher at the Northeast State Hospital (a State mental institution) in Macclenny, Florida, a small town outside Jacksonville, in which she had lived her whole life. She was the owner of the automobile in which the four defendants were arrested. (Papachristou Tr. 56-59).

Melton was a 24-year old Vietnam war veteran who had several months before been released from the Navy after nine months in a Veterans Administration Hospital recovering from Vietnam war wounds. On the date of his arrest, he was supporting himself as a parttime computer helper while attending college as a fulltime student at a college in Jacksonville. (Papachristou Tr. 40-62).

Johnson was a 24-year old tow-motor operator in a grocery chain warehouse. He was a lifelong resident of Jacksonville. In fact, while he was being arrested as a vagrant, some members of his family who had been passing by attempted unsuccessfully to vouch for him. (Papachristou Tr. 46-52).

Calloway, Melton and Johnson had never been previously arrested. Papachristou had once before been convicted of a municipal offense.

At the time of their arrest, the defendants were all riding in Calloway's car on a main thoroughfare in Jacksonville. They had gone to a restaurant, owned by Johnson's uncle, for something to eat and were on their way to a nightclub. (Papachristou Tr. 20-27, 40-61).

The arresting officers denied that the racial mixture of the defendants played any part in the decision to arrest them. The officers said they arrested the defendants because the defendants had been seen stopped near a used car lot which had been broken into several times. The officers admitted, however, that they had made no effort to find out if any breaking and entering had occurred on the night in question, had had no reports of any breaking and entering on the night in question, had advised no detectives or other investigative officers of the arrest of the defendants,

and had made no effort to drop the vagrancy charges and release the defendants when no evidence of any theft or other illegality materialized. (Papachristou Tr. 36-39).

After arrest, bail was set for the defendants at the maximum amount allowable under the Police Department bail schedule. Further, an unidentified caller from the Police Department telephoned Papachristou's parents that she had been out with a negro. Melton, who had given his unlisted telephone number to the booking officer, also began receiving threatening telephone calls. (Papachristou Tr. 53-62).

All four of the defendants were found to be vagrants and were sentenced to ten days in jail. The sentences for Calloway, Melton and Johnson were suspended because they had never before been arrested. Papachristou was ordered to serve her sentence because of her previous Municipal Court conviction. (Papachristou Tr. 65-72). (App. 11, 13, 15, 17).

City of Jacksonville v. Jimmy Lee Smith

Jimmy Lee Smith and a codefendant, Milton Henry, were charged in the Jacksonville Municipal Court with "vagrancy —vagabonds." (App. 5).

Smith was a 23 year old parttime produce worker and parttime organizer for a negro political organization. He had a common law wife and three children who were supported by him and his wife. He had previously been arrested several times, but had been convicted only once, in 1961. (Smith Tr. 17-24).

Smith's codefendant was an 18 year old high school student with no previous record of arrest. (Smith Tr. 8-16).

Smith and his codefendant were arrested between 9:00 and 10:00 A.M. on a weekday morning in a downtown Jacksonville business area. They were at the time waiting for a friend who was to lend them a car so that they could go apply for jobs reportedly available at a produce company. (Smith Tr. 10-21).

Because it was cold and Smith had no jacket, they went at one point to a dry cleaning shop to wait, but left when

requested to do so. They thereafter traveled back and forth two or three times over a two-block stretch looking for their friend. (Smith Tr. 14-20).

After approximately ten to twenty minutes, two police officers arrived, apparently summoned by store-owners who were wary of Smith and his companion. (Smith Tr. 14-20).

Smith and his codefendant made no attempt to avoid the officers and explained their situation to them. The officers searched both subjects and found that neither had a weapon. Both Smith and his companion were nonetheless arrested because they had no identification and because "their story just didn't seem to work from what we could see." (Smith Tr. 6-10, 30).

Because Smith's codefendant had no previous arrest record, he was acquitted.

Smith, however, was administered a tongue lashing about his character, his "open adultery," his "bastard children," his arrests, and his general demeanor. The judge concluded with the announcement that "you are not what we call a good citizen, a respectable citizen." He then sentenced Smith to 30 days imprisonment but suspended the prison sentence with the admonition that Smith would go to jail ". . . if they pick you up for this again and you are convicted. . .". (Smith Tr. 25-36). (App.

City of Jacksonville v. Henry Edward Heath

On March 18, 1969, at approximately 8:00 P.M., Heath and a codefendant were arrested for "vagrancy—loitering" and "vagrancy—common thief." (App. 6).

Heath was a lifelong resident of Jacksonville and was employed at a local automobile body shop. Heath's codefendant was also a self-supporting Jacksonville resident. Heath had previously been arrested, but his codefendant had no arrest record. (Heath Tr. 19-22, 24).

Heath and the codefendant were arrested when they drove up to a residence shared by Heath's girlfriend and some other girls. When Heath and the codefendant arrived

(in the codefendant's car), some police officers were at the premises in the process of arresting another man. (Heath Tr. 24-27).

When Heath and his codefendant started backing out of the driveway, the officers signaled to them to remain. Both men were then required to get out of the car, whereupon they were searched and the automobile was searched. (Heath Tr. 4-27).

Although no contraband or incriminating matter was found, both men were placed under arrest for vagrancy as aforesaid. The charge "vagrancy—common thief" was selected for Heath because he was reputed to be a thief. The charge "vagrancy—loitering" was placed against the codefendant because of his standing around the driveway, which the officers admitted was done only at their command. (Heath Tr. 4-27).

Heath's codefendant was acquitted.

Heath was found guilty and was sentenced to ten days imprisonment. (App. 7)

City of Jacksonville v. Thomas Owen Campbell

Campbell was arrested as he approached his home on April 18, 1969, very early in the morning. He was charged with "vagrancy—common thief." (App. 8).

The arresting officer testified that he stopped Campbell because Campbell was traveling at a high rate of speed. He placed no speeding charge against Campbell, however. The officer first said that he was in the vicinity observing traffic, even though the arrest took place at 2:30 A.M. in a residential neighborhood. The officer then admitted that his presence in the vicinity was because Campbell lived there. (Campbell Tr. 4-8).

Campbell was found guilty and was given a 10-day suspended sentence. (App. 9)

City of Jacksonville v. Hugh Brown

Brown was arrested on January 29, 1969, for "vagrancy–disorderly loitering on street" and "disorderly conduct–resisting arrest with violence." (App. 3).

Shortly before midnight, Brown was observed leaving the Richmond Hotel, a small downtown hotel, by a Jacksonville police officer. The police testified that Brown was reported to be a thief, narcotics pusher, and generally opprobrious character. The officer, who was seated in a police cruiser with another officer, called for Brown to come over to him. He said that he was suspicious of Brown because of the general combination of Brown's reputation, the way Brown was walking, the appearance of something resembling money in Brown's hand, and the high crime rate of the locale. He called Brown over to search him and check him out generally, intending at the time to arrest him unless he had a good explanation for being on the street. (Brown Tr. 7-20).

When Brown came over to the police car as commanded by the officer, the officer began to search him, apparently preparatory to placing him in the car. In the course of the search, he came upon two small packets, later found to contain heroin. When the officer touched the pocket where the packets were, Brown began to resist violently. (Brown Tr. 7-20).

The arresting officer and his partner testified that they did not know how long Brown had been a resident of Jacksonville, did not know whether he had a family, did not know whether he had any residence, and did not know whether he had any employment. (Brown Tr. 22-29).

Brown was convicted on both charges, being sentenced to 30 days imprisonment on the vagrancy charges and 60 days on the resisting arrest charge. (App. 4).

STATEMENT OF PROCEDURES BELOW

The Municipal Court charge against petitioners was stated only on the police department docket sheet made up when they were booked into the jail. (App. 3, 5, 6, 8, 10, 12, 14, 16). Under Florida law, no indictment, information, affidavit, or formal charging instrument is required in municipal courts. *Wright v. North*, 91 So. 87 (Fla. 1922); *Trujillo v. State*, 187 So.2d 390 (3rd Dist. Fla. 1966).

Use of the term "vagrancy" as the opening entry in the charging portion of the docket sheet meant that petitioners were charged simply with "vagrancy" and stood liable to conviction under any part of the city ordinance or state statute.

The explanatory words appearing after "vagrancy" on each docket sheet did not qualify the general vagrancy charge. They were added under a police department practice of noting what persons arrested for such offenses as vagrancy and disorderly conduct were doing or being when arrested. The explanatory words were not intended to isolate some part of the ordinance or statute as the basis for the charge. For example, the four defendants in the Papachristou case were accused of "vagrancy—prowling by auto" on the docket sheet. (App. 10, 12, 14, 16) The words "prowling by auto" refer to no specific part of the ordinance or statute and are technically surplusage. The defendants were charged—and convicted—under the entire ordinance or statute.

Presumably the city authorities felt they were proceeding on their own ordinance rather than the state statute. The parties proceeded on that assumption in the appellate stages below. The state statute is treated in this brief only because of its theoretical availability. In any event, the ordinance and statute are almost identical.

The Municipal Court convictions were affirmed by the Circuit Court for the Fourth Judicial Circuit of Florida. (App. 19). Petitioners then applied to the District Court

of Appeal, First District of Florida, for a writ of certiorari (App. 20, 23), which was denied. (App. 39, 42). Both the Circuit Court and District Court of Appeal felt that the constitutionality of the Jacksonville ordinance was controlled by the Florida Supreme Court's decision in *Johnson v. State*, 216 So.2d 7 (Fla: 1968), upholding the state statute.

SUMMARY OF ARGUMENT

Several constitutional principles are violated by the instant legislation.

IMPROPER EXERCISE OF POLICE POWER

The legislation is an improper exercise of police power which is not required in the public interest, is not necessary for its purported purposes, and is unduly oppressive on individuals.

This legislation is patterned after old English *malum prohibitum* socio-economic legislation tailored to the peculiar needs of feudal and Elizabethan England. It consequently criminalizes people for things that are totally non-criminal by modern standards—i.e., nightwalking, loafing, and living on the earnings of their wives or children. In this respect it seriously jeopardizes the zone of privacy secured by *Griswold v. Connecticut*, 381 U.S. 479 (1965).

The status proscriptions of the legislation in effect create presumptions of criminality based upon the supposed propensity of certain persons to commit crimes. These presumptions are not sufficiently grounded in logic and rationality for criminal penalties to be based upon them. More grievous, the proscriptions subject persons to unlimited, continuing liability to punishment, unconditioned by the quality or frequency of past acts, past punishment, or likelihood of future violations.

The wrong in the legislation is compounded by the availability of far less drastic means for achieving the same purpose.

VOID FOR VAGUENESS

Lack of Notice

The legislation is incredibly vague and provides no notice of the conduct sought to be prohibited. It is far more vague than the anti-gang statute (a kind of modern vagrancy law) struck down in *Lanzetta v. New Jersey*, 306 U.S. 451 (1939).

Lack of Enforcement Standards

A total lack of enforcement standards leaves complete enforcement discretion in the hands of enforcing officers, whether policemen, prosecutors, municipal judges, or juries. The dangers of this are magnified because the legislation is directed at the unpopular, unconventional, and unestablished.

Lack of Breathing Space

The vagueness of the legislation inhibits people in the exercise of sensitive, preferred rights.

USE FOR ARREST AND DETENTION ON SUSPICION ALONE

Ingrained in vagrancy is a tradition of use as a makeweight for arrest and detention on suspicion alone. The basic premise of the legislation is that some people are *per se* suspicious, and the way the legislation is used is the natural and logical result of that built-in premise.

This history of use for "suspicion only" is abundantly documented and provable. It so permeates the legislation that it must be regarded as an integral part of it which renders it facially unconstitutional.

ADDITIONAL RIGHTS AND IMMUNITIES

Vagrancy is objectionable on a number of other constitutional grounds not presented as squarely here as those above. These additional objections are simply stated to demonstrate the total inimicability of vagrancy to current standards. The other objections are: (1) denial of equal protection, (2) cruel and unusual punishment or unjust punishment in violation of due process, (3) involuntary servitude, (4) abridgement of the privilege against self incrimination, (5) infringement of the right of travel and movement and (6) double jeopardy.

ARGUMENT

The Jacksonville and Florida vagrancy laws are archaic vestiges of long-past economic conditions and social philosophies. Whatever justification vagrancy laws may once have had, the instant legislation is invalid under several constitutional principles.[4]

---

[4]The instant legislation was held constitutionally invalid by a three judge panel in *Lazarus v. Faircloth*, 301 F. Supp. 266 (S.D. Fla. 1969). Other decisions holding similar legislation unconstitutional are: *Ricks v. District of Columbia*, 414 F.2d 1097 (D.C. Cir. 1968); *Scott v. District Attorney, Jefferson Parish*, 309 F. Supp. (E.D. La. 1970); *Wheeler v. Goodman*, 298 F. Supp. 935 (W.D. N.C. 1969); *Broughton v. Brewer*, 298 F. Supp. 260 (S.D. Ala. 1969); *Goldman v. Knecht*, 295 F. Supp. 897 (D. Colo. 1969); *Smith v. Hill*, 285 F. Supp. 556 (E.D. N.C. 1968); *Landry v. Daley*, 280 F. Supp. 968 (N.D. Ill. 1968); *Baker v. Bindner*, 274 F. Supp. 658 (W.D. Ky. 1967); *United States v. Margeson*, 259 F. Supp. 256 (E.D. Pa. 1966); *Balizer v. Shaver*, 481 P.2d 700 (N.M. Ct. App. 1971); *State v. Grahovic*, 480 P.2d 148 (Hawaii 1971); *Arnold v. City and County of Denver*, 464 P.2d 515 (Colo. 1970); *City of Reno v. Second Judicial District Court*, 427 P.2d 4 (Nev. 1967); *Alegata v. Commonwealth*, 231 N.E.2d 201 (Mass. 1967); *Fenster v. Leary*, 229 N.E.2d 426 (N.Y. 1967). See also *United States v. Kilgen*, 431 F.2d 627 (5th Cir. 1970); *Jones v. Peyton*, 411 F.2d 857 (4th Cir. 1969); *Territory of Hawaii v. Andula*, 48 F.2d 171 (9th Cir. 1931).

Numerous commentators have also concluded that vagrancy legislation is unconstitutional. Especially helpful are: Amsterdam, *Federal*

IMPROPER EXERCISE OF POLICE POWER

The most grievous fault of the instant legislation is that it imposes criminal penalties upon status and conduct which are not criminal and have no rational relationship to criminality. The legislation, therefore, exceeds the state's police power.

"The term 'police power' denotes the time-tested conceptional limit of public encroachment upon private interests." *Goldblatt v. Town of Hempstead*, 369 U.S. 590, 594 (1962). An exercise of police power must be reasonable. This Court ruled in *Goldblatt*:

> "The classic statement of the rule in *Lawton v. Steele*, 152 U.S. 133 (1894) is still valid today: 'To justify the State . . . in interposing its authority in behalf of the public, it must appear, first, that the interest of the public . . . requires such interference; and second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals.'" 369 U.S. at 594.

The first evidence of the instant legislation's current inappropriateness is its derivation. Both the Jacksonville ordinance and Florida statute are products of the peculiar social needs of feudal and Elizabethan England.

Constitutional Restrictions on the Punishment of Crimes of Status, Crimes of General Obnoxiousness, Crimes of Displeasing Police Officers, and the Like, 3 Crim. L. Bull. 205 (1967); Note, *The Vagrancy Concept Reconsidered: Problems and Abuses of Status Criminality*, 37 N.Y.U. L. Rev. 102 (1962). Others are: McClure, *Vagrants, Criminals and the Constitution*, 40 Denver L. Center J. 314 (1963); Douglas, *Vagrancy and Arrest on Suspicion*, 70 Yale L.J. 1 (1960); Sherry, *Vagrants, Rogues and Vagabonds–Old Concepts in Need of Revision*, 48 Calif. L. Rev. 557 (1960); Foote, *Vagrancy-type Law and Its Administration*, 104 U. Pa. L. Rev. 603 (1956); Lacey, *Vagrancy and Other Crimes of Personal Condition*, 66 Harv. L. Rev. 1203 (1953); Note, *Vagrancy–A Study in Constitutional Obsolescence*, 22 U. Fla. L. Rev. 384 (1970); Note, *Constitutional Attacks on Vagrancy Laws*, 20 Stanford L. Rev. 782 (1968); Note, *Vagrancy and Related Offenses*, 4 Harv. Civ. Lib.-Civ. Rights L. Rev. 141 (1966).

In feudal England, the serf was bound to his manor, with no right of migration.[5] With the breakdown of feudalism and the disintegration of the social forces which had held the working populace to a specific locale, the former serfs began to drift to other places and into other ways of life. The resultant labor shortages and economic pressures were intensified by the Black Plague. The governing forces responded immediately with the Statutes of Labourers, designed to guarantee laborers in each part of the country and to prevent any rise in wages or the price of goods by fixing maximum limits on wages and prohibiting the movement of workers from their area of residence for a better livelihood.[6]

Additional legislation followed shortly, dealing more broadly with: (1) restriction of the able bodied to their own parish and the regulation of their labor, (2) provision for and stabilization of local systems for the relief of impotent poor unable to work, and (3) punishment for the able bodied who would not work.[7] Illustrative is an act passed in 1414 (2 Hen. V, c. 4) providing that runaway servants and laborers who fled "to the great damage of gentlemen and others to whom they should serve" could be given summary hearings and be sent back to their original homes.

Beginning in the middle 16th Century, vagrancy legislation took on another dimension. The combination of increases in population and the withering away of old institutions created a large class of unemployed drifters. Black-

[5]Coulton, *Medieval Panorama* (The Noon Day Press, New York, 1955), p. 76.

[6]23 Edw. III, c. 1 (1349); 25 Edw. III, c. 1 (1350). See in addition 25 Edw. III, c. 7 (1350). See III Stephen, *History of the Criminal Law of England*, pp. 267, 274 (MacMillan and Co., London, 1883); Coulton, *Medieval Panorama*, p. 82 (Noon Day Press, New York, 1955); Turner (Editor), *Kenney's Outlines of the Criminal Law*, p. 28 (Cambridge University Press, 18th Edition 1962).

[7]1 Rich. II, c. 6 (1377); 2 Rich. II, c. 6 (1378); 7 Rich. II, c. 5 (1383); 12 Rich. II, c. 3 (1388). See *Ledwith v. Roberts*, 1 K.B. 232, 271-274 (1937); III Stephen, *supra*, pp. 268-272; Coulton, *supra*, p. 82.

stone described these people as "such as wake on the night and sleep on the day, and haunt customable taverns and ale houses, and routs abouts, and no man wot from whence they came and whither they go,". IV Blackstone, *Commentaries*, Chap. XIII *169. This evolution was summarized in *Ledwith v. Roberts*, 1 K.B. 232, 271 (1937):

> "The early Vagrancy Acts came into being under peculiar conditions utterly different from those of the present time. From the time of the Black Death in the middle of the 14th Century till the middle of the 17th Century, and indeed, although in diminishing degree, right down to the reform of the Poor Law in the first half of the 19th Century, the roads of England were crowded with masterless men and their families, who had lost their former employment through a variety of causes, had no means of livelihood and had taken a vagrant life. The main causes were the gradual decay of the feudal system under which the labouring classes had been anchored to the soil, the economic slackening of the legal compulsion to work for fixed wages, the breakup of the monasteries in the reign of Henry VIII, and the consequent disappearance of the religious orders which had previously administered a kind of 'public assistance' in the form of lodgings, food, and alms, and lastly, the economic changes brought about by the Enclosure Acts. Some of these people were honest labourers who had fallen upon evil days, others were the 'wild rogues' so common in Elizabethan times and literature, who had been born to a life of idleness and had no intention of following any other. It was they and their conferderates who formed themselves into the notorious 'brotherhood of beggars' which flourished in the 16th and 17th Centuries."

The result was a 16th Century series of acts designed to reach all categories of "rogues and vagabonds" and to provide the means for suppressing them.[8] The premise for

---

[8]See, e.g., 19 Hen. VII, c. 12 (1503); 22 Hen. VIII, c. 12 (1530); 27 Hen. VIII, c. 25 (1535); 1 Ed. VI, c. 3 (1547). Extremely harsh

these was stated in the preamble of the Slavery Act of 1547:

> "Idlesnes and Vagabundrye is the mother and roote of all theftes robberyes and all evill actes and other mischiefs . . ." 1 Ed. VI, c. 3 (1547)

The culmination of this broadening of the legislation to meet 16th Century exigencies, was the Statute of Elizabeth in 1597. 39 Eliz. I, c. 4 (1597).

This history is significant because the Jacksonville and Florida vagrancy legislation is strikingly similar to the Statute of Elizabeth. One author has pointed out that the Florida statute "seems to have been selected at random from the provisions of the Statute of Elizabeth as it was enacted in 1597." Sherry, "*Vagrants, Rogues and Vagabonds–Old Concepts in Need of Revision,*" 48 Calif. L. Rev. 557, 560 (1960). This in effect means that the Jacksonville and Florida laws are copied from *malum prohibitum* legislation tailored for the socio-economic needs of the 16th Century. While not conclusive, this feudal and Elizabethan derivation creates a virtual presumption of unsuitability to mid-20th Century conditions.

Measured by current standards, the interference caused by many portions of the instant legislation is manifestly not required in the interest of the public, is not reasonably necessary for the accomplishment of the purpose, and is unduly oppressive upon individuals. Widely approved pursuits–indulged by most, if not all–run afoul of the prohibitions against "night walkers," "habitual loafers," or "wandering or strolling . . . from place to place . . .". Prosecution of "persons neglecting all lawful business and habitually spending their time by frequenting . . . places where alco-

---

penalties were provided. The ears of certain offenders could be notched or cut off, and multiple offenders could ultimately be branded or executed. Under the Slavery Act of 1547 (1 Ed. VI, c. 3) all loitering and idle wanderers who would not work would be taken for vagabonds and thereafter be branded, be made slaves, be forced to wear a ring of iron around their necks and limbs and be compelled to work by beating, chaining, or otherwise.

holic beverages are sold or served" would no doubt greatly jeopardize the membership of most country clubs. Having regard for the distribution of wealth in today's economy, it would greatly surprise many citizens who consider themselves lawabiding to learn that being supported by their wives or children is a criminal offense. Totally mind-boggling is the notion that people who are without "reasonably continuous employment or regular income and who have not sufficient properties to sustain them and misspend what they earn . . ." are criminals. The criminalization of these people, and countless others who could be similarly included, seriously threatens the zone of privacy sought to be preserved by this Court's decision in *Griswold v. Connecticut*, 381 U.S. 479 (1965). If, in some way, the public interest is served by such interference, criminal punishment is unduly oppressive and not reasonably necessary as a corrective.

Other portions of the instant legislation fall in a different category. The State clearly has a valid right to interfere with gamblers, thieves, pilferers, pickpockets, traders in stolen property, and even beggars, drunkards, railers, and brawlers. Certainly it would be within the State's province to punish specific instances of these activities. But regulation of these activities by blanket status proscriptions is not a valid exercise of police power.

Even in these areas of legitimate interest, vagrancy is no more than a conclusive presumption of criminality based on a supposed propensity for crime. By analogy to the line of cases represented by *Leary v. United States*, 396 U.S. 6 (1969), the instant legislation should be struck down unless Jacksonville and Florida can demonstrate a rational basis for it. The published analyses tend to negate a rational realtions. See Note, *Vagrancy Concepts Reconsidered: Problems and Abuses of Status Criminality*, 37 N.Y.U. L. Rev. 102, 116, 125 (1962); Foote, *Vagrancy—Type, Law and Its Administration*, 104 U. Pa. L. Rev. 603 (1956).

A more fundamental objection is the completeness of the legislation's coverage, both in breadth and duration, and the

harshness that results. An individual can, for example, become a "thief," for purposes of the legislation, by proof of conviction of some kind of theft. *Rodriguez v. Culbreath*, 69 So.2d 58 (Fla. 1953) (a gambling case). By operation of the instant laws, he then becomes permanently subject to incarceration, since vagrancy is a continuing offense. It makes no difference that his theft—or two or three thefts, for that matter—may have been minor and that he may have been punished under the laws dealing specifically with acts of theft. Stated another way, the vagrancy laws would subject him to punishment because of a continuing status conferred by past, noncontinuing—perhaps repented—acts. This is possible because the instant laws flatly proscribe status, unqualified by limitations based on such factors as frequency or quality of past acts, past punishment, or the likelihood of future violations.

The unreasonableness of the instant laws is compounded by the availability of other means for accomplishing crime control. Florida and its municipalities are amply armed with laws against specific acts of thievery, gambling, etc. A new Comprehensive Alcoholism Prevention, Control and Treatment Act is available for alcoholism. Chapter 71-132, 1971 Regular Session, Florida Legislature. Law enforcement officers have, in addition to this Court's decision in *Terry v. Ohio*, 292 U.S. 1 (1968), a stop-and-frisk law for temporary street detentions. § 901.151 Florida Statutes (1969). There is also a multiple offenders act, although considerably more circumscribed than the vagrancy laws. § 775.084 Florida Statutes (1971). The availability of these alternate methods is relevant under this Court's ruling in *Shelton v. Tucker*, 364 U.S. 479, 488 (1960) that:

> ". . . even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgement must be viewed in the light of less drastic means for achieving the same basic purpose."

Whatever small, otherwise unavailable, benefit is attained by the vagrancy laws is offset by their harmful effects. As stated by the Task Force on Administration of Justice of the President's Commission on Law Enforcement and Administration of Justice:

> "The high price paid for extending to the police wide and largely uncontrollable power of traditional disorderly conduct and vagrancy laws should be recognized."[9]

One of the first actions taken by a newly formed Jacksonville Community Relations Commission, created to alleviate urban tensions, was to seek a discontinuance by local police of use of the vagrancy laws.[10]

VOID FOR VAGUENESS

"The first essential of due process of law" is violated by "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." *Connally v. General Constr. Co.*, 269 U.S. 385, 391 (1926).

Reasonable definiteness is needed to satisfy three fundamentally important social concerns: (1) to provide fair notice to affected persons, (2) to provide ascertainable and delimited standards of enforcement for the prevention of arbitrary, discriminatory, standardless use, and (3) to secure a "breathing space" for constitutional liberties, especially the preferred guarantees of the Bill of Rights.[11] These policies apply to the instant legislation as follows:

---

[9] *The Courts*, Report of the Task Force on Administration of Justice, the President's Commission on Law Enforcement and Administration of Justice, p. 104 (U.S. Government Printing Office 1967).

[10] Minutes of Special Meeting, Community Relations Commission of the City of Jacksonville, April 23, 1969.

[11] This breakdown of the policies embodied in the void-for-vagueness rule follows the analysis of Professor Anthony Amsterdam in *Federal Constitutional Restrictions on the Punishment of Crimes of*

Lack of Notice

A criminal statute must give reasonable notice of the conduct sought to be prohibited. This Court said in *United States v. Harriss*, 347 U.S. 612, 617 (1954):

> "The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed."

See also, *Palmer v. Euclid*, ___ U.S. ___ (No. 143 decided May 24, 1971); *Bouie v. Columbia*, 378 U.S. 347 (1964); and *Wright v. Georgia*, 373 U.S. 284 (1963).

That the instant legislation fails to give reasonable notice to affected persons is too obvious to require extended analysis or argument. Such terms as "dissolute," "lewd," "wanton and lascivious," "disorderly," "habitually," "frequenting," and "misspend" defy definiteness. Equally difficult to pin down are the terms "rogues," "common railers and brawlers," "persons wandering or strolling around from place to place without any lawful purpose or object," "habitual loafers," "disorderly persons," and "persons neglecting all lawful business." Even such apparently recognizable categories as "vagabonds," "common drunkards," "thieves, pilferers or pickpockets," "common gamblers," and "traders in stolen property" are under closer scrutiny incapable of ascertainment in the absence of any definition or guideline.

Status, Crimes of General Obnoxiousness, Crimes of Displeasing Police Officers and the Like, 3 Crim. L. Bull. 205 (1967). Professor Amsterdam there uses vagrancy for demonstration of a general approach developed more fully in Note, *The Void-for-Vagueness Doctrine in the Supreme Court*, 109 U. Pa. L. Rev. 67 (1960), which was noted with approval by this Court in *N.A.A.C.P. v. Button*, 371 U.S. 415, 433 (1963).

The lack of notice in vagrancy legislation was expressly cited by Mr. Justice Frankfurter in *Winters v. New York*, 333 U.S. 507, 540 (1948) (dissenting opinion):

> "These statutes are in a class by themselves in view of the familiar abuses to which they are put. See Note, 47 Col. L. Rev. 613, 625. Definiteness is designedly avoided so as to allow the net to be cast at large, to enable men to be caught who are vaguely undesirable in the eyes of the police and prosecution, although not chargeable with any particular offense. In short, these 'vagrancy statutes' and laws against 'gangs' are not fenced in by the text of the statutes or by the subject matter so as to give notice of conduct to be avoided."

In *Lanzetta v. New Jersey*, 306 U.S. 451 (1939), a New Jersey "anti-gang" statute, a kind of modern vagrancy statute, was struck down for failure to give affected persons adequate notice of any ascertainable standard of conduct. The vagueness of the instant legislation, of course, far exceeds that in *Lanzetta*.

While a facially vague statute may sometimes be saved by confinement to a narrow subject matter which imparts specificity and provides a point of reference (see e.g., *United States v. National Dairy Prods. Co.*, 372 U.S. 29 (1963)), or by a strong scienter requirement, which prevents inadvertent transgression (see e.g., *Screws v. United States*, 325 U.S. 91 (1945)), there is no such saving factor here. On the contrary, the social setting of the legislation makes interpretation of it more difficult.

Lack of Enforcement Standards

The instant legislation is as devoid of enforcement standards as of notice. Absolute discretion is vested in the enforcing officers, whether policeman, prosecutor, municipal judge, or jury. The right of the enforcing officers to set their own standards and pick their own targets is implied in the legislation, since stringent enforcement against all

who might come within its ambit would lead eventually to the arrest of everyone. An express selective enforcement gloss was put on the Florida statute by the Florida Supreme Court in *Headley v. Selkowitz*, 171 So.2d 368 (Fla. 1968).

The danger of oppression and harassment in standardless legislation is especially acute when, as here, the legislation is directed at the unpopular, unconventional, and unestablished. A typical example of the inevitable abuse is the Papachristou situation here, where the four defendants were obviously arrested and convicted for violating local racial taboos. Another example in the recent records of this Court is *Adickes v. Kress & Co.*, 398 U.S. 144 (1970), which resulted from the vagrancy arrest of a civil rights sit-in demonstrator.

Dealing in *Shuttlesworth v. City of Birmingham*, 382 U.S. 87, 90-91 (1965) with legislation vesting comparable discretion in enforcing officers, this Court said:

> "The constitutional vice of so broad a provision needs no demonstration. It 'does not provide for government by clearly defined laws, but rather for government by the moment-to-moment opinions of a policeman on his beat.' *Cox v. State of Louisiana*, 379 U.S. 536, 559, 579 (Separate opinion of Mr. Justice Black)."

This Court has also held ascertainable standards to be equally important at the courtroom stage. *Giaccio v. Pennsylvania*, 83 U.S. 399 (1966).

In other contexts, this Court has noted that the standardless law "licenses the jury to create its own standard in each case." *Herndon v. Lowry*, 301 U.S. 242, 263 (1937); furnishes a convenient tool for "harsh and discriminatory enforcement by prosecuting officials, against particular groups designed to merit their displeasure," *Thornhill v. Alabama*, 388 U.S. 88, 97-98 (1940); and is "susceptible of sweeping and improper application," and "lends itself to selective enforcement against unpopular causes," *N.A.A.C.P. v. Button*, 371 U.S. 415, 433, 435 (1963).

Of particular note is the position taken by the Task Force on the Administration of Justice of the President's Commission on Law Enforcement and Administration of Justice. In commenting on the "wide and largely uncontrollable power extended to the police by the disorderly conduct and vagrancy laws," the Task Force stated:

> "Foremost among its disadvantages is that it constitutes an abandonment of the basic principle upon which the whole system of criminal justice in a democratic community rests, close control over exercise of the authority delegated to officials to employ force and coercion. This control is to be found in carefully defined laws and in judicial and administrative accountability. The looseness of the laws constitutes a charter of authority on the street whenever the police deem it desirable. The practical costs of this departure from principle are significant. One of its consequences is to communicate to the people who tend to be the object of these laws the idea that law enforcement is not a regularized, authoritative procedure, but largely a matter of arbitrary behavior by the authorities. The application of these laws often tends to discriminate against the poor and subcultural groups in the population. It is unjust to structure law enforcement in such a way that poverty itself becomes a crime. And it is costly for society when the law arouses the feelings associated with these laws in the ghetto, a sense of persecution and helplessness before official power and hostility to police and other authority that may tend to generate the very conditions of criminality society is seeking to extirpate."
>
> *The Courts*, Report of the Task Force on Administration of Justice, the President's Commission on Law Enforcement and Administration of Justice, pp. 103-104 (U.S. Government Printing Office (1967).

Restriction of "Breathing Space"

"A third consequence of the vagueness in the instant legislation is its tendency to inhibit people in the exercise of constitutionally protected liberties. While this consequence is in many respects a combination of the lack-of-notice and lack-of-enforcement-standards problems, it is also a serious problem deserving of independent recognition. This Court has held in dealing with rights of constitutional dignity, especially the high priority, preferred rights, that "government may regulate only with narrow specificity," in order to leave a "breathing space to survive." *N.A.A.C.P. v. Button,* 371 U.S. 415, 432-433 (1963); *Dombrowski v. Pfister,* 380 U.S. 479 (1965).

As will be treated later in this brief, the instant legislation in various ways threatens the right of expression, the right against self-incrimination, the right against unreasonable search and seizure, the right to travel, the right against cruel and unusual punishment, the right to equal protection of the law, and such due process rights as to be arrested only upon probable cause.

USE FOR ARREST AND DETENTION ON SUSPICION ALONE

Ingrained in vagrancy is a tradition of use as a makeweight when law enforcement officers want to arrest someone but can think of no legitimate grounds. This tradition is so pervasive and universally accepted that it has become a virtual substantive engraftment on the vagrancy concept.

Documentation of this tradition is abundant. Immediately illustrative is the attitude of the Assistant City Attorney who represented the City of Jacksonville at the Municipal Court trial in the Papachristou case. Resisting a motion to strike post-arrest statements by the defendants and to dismiss the charge for lack of evidence, he said:

> "Well, talking about vagrants—we're not talking about the commission of a crime. A vagrancy statute is more of a preventative measure . . .". (Papachristou Tr. 39).

Making it plain that the above statement was not the casual misimpression of a young assistant is the following comment by the State Attorney for the Fourth Judicial Circuit of Florida, which includes Jacksonville, during a 1969 televised panel discussion on vagrancy with other law enforcement spokesmen and community representatives:

> "The vagrancy law in Florida is a very broad law that is really a law enforcement tool primarily for temporary detention of suspects. I think [that] is its primary objective.
>
> * * * * *
>
> "I would like to point out that this gentleman over here mentioned that perhaps it should have another name. Perhaps it should have a temporary detention of suspicious persons name or something of that sort."[12]

Highly authoritative confirmation of this tradition is provided by the President's Commission on Law Enforcement and Administration of Justice. The Commission Task Force on the Administration of Justice reported with regard to vagrancy laws that:

> "Their current and widespread use as documented in a number of recent studies, is to afford police justification which otherwise would not be present under prevailing constitutional and statutory limitations, to arrest, search, question, and detain persons because of suspicions that they have committed or may commit a crime. They are also used by the police to clean the streets of undesirables, to harass persons believed to be engaged in crime, and to investigate uncleared offenses."

---

[12]Panel discussion on "Feedback," WJCT-TV, Jacksonville, Florida, March 7, 1969.

The Courts, Report of the Task Force on Administration of Justice, the President's Commission on Law Enforcement and Administration of Justice, p. 103 (U.S. Government Printing Office, 1967).

The Task Force on Police echoed these findings. *The Police*, Report of the Task Force on the Police, The President's Commission on Law Enforcement and Administration of Justice, pp. 187-188 (U.S. Government Printing Office, 1967).

The same thing was found by the American Bar Foundation during its Survey of the Administration of Criminal Justice in the United States. See LaFave, *Arrest: The Decision to Take a Suspect into Custody*, pp. 87-89, 354-360 (The Administration of Criminal Justice Series, American Bar Foundation, 1965). Professor LaFave also tells of the "ten day vag. check" by which law enforcement officers obtain the detention of persons for ten days' investigation. In the Jacksonville area, suspicious transients are sometimes sentenced to ten days for vagrancy so that they can be held while an F.B.I. fingerprint check is run to see if they are fugitives from any jurisdiction.[13] See also, Douglas, *Vagrancy and Arrest on Suspicion*, 70 Yale L.J. 1 (1960); Foote, *Vagrancy-type Law and Its Administration*, 104 U. Pa. L. Rev. 603 (1956); Note, *The Vagrancy Concept Reconsidered: Problems and Abuses of Status Criminality*, 37 N.Y.U. L. Rev. 102 (1962); Note, *Use of Vagrancy-type Laws for Arrest and Detention of Suspicious Persons*, 59 Yale L.J. 1351 (1950).

A good example of use of vagrancy solely as an investigative tool was recently before this Court in *Wainwright v. City of New Orleans*, 392 U.S. 598 (1968). A classic example is provided here by the Hugh Brown case.[14]

[13] This statement is based on conversations with municipal judges.

[14] Ironically, because of the State's reliance on vagrancy to support the arrest and heroin-disclosing search of Brown, with attendant probable clause requirements, the heroin was suppressed at Brown's subsequent Criminal Court of Record narcotic prosecution. If the State

This background shows that the instant legislation is shaped and molded by a purpose and history that colors its language and "puts . . . words in [it] as definitively as if it had been so amended by the Legislature." *Winters v. New York*, 333 U.S. 507, 514 (1948). The basic premise underlying the legislation is that the people to whom it will be applied are *per se* suspicious, and the way the legislation is used is the natural result of that premise.

Arrest and detention on suspicion alone are clearly unconstitutional. *Morales v. New York*, 396 U.S. 102 (1969); *Davis v. Mississippi*, 394 U.S. 721 (1969). Conviction on suspicion alone is unthinkable. *In re Winship*, 397 U.S. 358 (1970). The "suspicion only" character of this legislation accordingly renders it facially unconstitutional.

ADDITIONAL RIGHTS AND IMMUNITIES

Constitutional objections in addition to those previously urged in this brief could be raised against the instant legislation. Although meritorious, these objections apply with less force to the parties here and will, therefore, be simply stated without elaboration. They are mentioned largely because their number and variety point up the general inimicability of vagrancy to current principles of social regulation.

Denial of Equal Protection

Many classifications of the instant legislation are arbitrary and discriminatory without any constitutionally redeeming purpose. They accordingly deny equal protection under the law. See e.g., *Rinaldi v. Yeager*, 384 U.S. 305 (1966). Especially invidious is the discrimination against poor and/or unemployed persons both explicit and implicit in the legis-

---

had attempted to pursue and develop a stop-and-frisk theory, it might have obtained a deserved conviction. *State v. Brown*, 69-449, Criminal Court of Record for Duval County, Florida.

lation. This Court said in 1941 that "the theory of the Elizabethan poor laws no longer fits the facts." *Edwards v. California*, 314 U.S. 164, 174 (1941). More recently this Court said, "Lines drawn on the basis of wealth or property, like those of race . . . are traditionally disfavored." *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 668 (1966). The legislation also invites and promotes abridgement of equal protection by its lack of enforcement standards.

Cruel and Unusual Punishment or Unjust Punishment in Violation of Due Process

To the extent that the legislation makes punishable an involuntary condition or status of life (i.e., poverty or alcoholism) and imposes criminal penalties on status involving no criminality or criminal acts, it provides for cruel and unusual punishment and punishment in violation of due process of law. See *Robinson v. California*, 370 U.S. 660 (1962).

Involuntary Servitude

A cogent argument can be made that a law requiring people to either go to work or go to jail violates the involuntary servitude provisions of the Thirteenth Amendment. See Note, *Vagrancy and Related Offenses*, 4 Harv. Civ. Lib.-Civ. Rights L. Rev. 291 (1960).

Privilege Against Self Incrimination

The self-incrimination problems in the instant legislation result principally from the prohibition against "wandering or strolling around from place to place without any lawful purpose or object." This provision in effect requires a suspected person to give an account of himself. Other provisions of the legislation tend subtly to compel an account. See *Malloy v. Hogan*, 378 U.S. 1 (1964).

Right of Travel and Movement

The prohibitions against vagabonds, night walkers, and wanderers infringe upon the right of travel and movement secured by the Commerce Clause and due process of law. As said in *Aptheker v. Secretary of State*, 378 U.S. 500, 505-506 (1964), "the right to travel is a part of the 'liberty' of which a citizen cannot be deprived without due process of law . . .". See also *United States v. Guest*, 383 U.S. 745 (1966); *Kent v. Dulles*, 357 U.S. 116 (1958); and *Edwards v. California*, 314 U.S. 160 (1941).

Double Jeopardy

Penalizing a person for an offense and then penalizing him again for the status resulting from his prior conviction subjects him twice to punishment for the same act or omission.

CONCLUSION

The instant legislation and comparable legislation in other states is flagrantly violative of the Constitution. Any socially valid purpose the concept ever had has expired, and vagrancy has become wholly an instrument of abuse. The abuse, moreover, is widespread. According to the F.B.I.'s Uniform Crime Report for 1969,[15] 106,269 vagrancy arrests were reported by ageneies covering only approximately 144,000,000 of the total American population.

Only an order by this Court striking down the legislation in its entirety can overcome Florida's persistent defense and use of its vagrancy laws. *Smith v. State*, 239 So.2d 250 (Fla. 1970) (Certiorari granted by this Court June 14, 1971); *Johnson v. State*, 202 So.2d 852 (Fla. 1967) and 216 So.2d (Fla. 1968).

---

[15] *Crime in the United States, Uniform Crime Reports–1969*, Federal Bureau of Investigation, Table 23. Page 109 (U.S. Government Printing Office 1970).

Petitioners accordingly ask this Court to declare the Jacksonville Vagrancy Ordinance and Florida Vagrancy Statute unconstitutional and to vacate and set aside their convictions and sentences.

Respectfully submitted,

Samuel S. Jacobson
SAMUEL S. JACOBSON
DATZ, JACOBSON & DUSEK
320 Southeast First Bank Bldg.
Jacksonville, Florida 32202

In The
Supreme Court of the United States

OCTOBER TERM, 1971

NO. 70-5030

MARGARET PAPACHRISTOU, et al.,

Petitioners,

v.

CITY OF JACKSONVILLE,

Respondent.

On Writ of Certiorari to the District Court of Appeal,
First District of Florida

RESPONDENT'S BRIEF

JAMES C. RINAMAN, JR.
Special Counsel

DAVID U. TUMIN
Assistant Counsel

J. EDWARD WALL
Assistant Counsel
1300 City Hall
Jacksonville, Florida 32202

T. EDWARD AUSTIN, JR.
State Attorney
Duval County Courthouse
Jacksonville, Florida 32202

Attorneys for Respondent

INDEX

TABLE OF AUTHORITIES

Page No.

Cases

TABLE OF AUTHORITIES (Cont'd)

TABLE OF AUTHORITIES (Cont'd)

Page No.

TABLE OF AUTHORITIES (Cont'd)

TABLE OF AUTHORITIES (Cont'd)

In The
Supreme Court of the United States

OCTOBER TERM, 1971

NO. 70-5030

MARGARET PAPACHRISTOU, et al.,

Petitioners,

v.

CITY OF JACKSONVILLE,

Respondent.

On Writ of Certiorari to the District Court of Appeal, First District of Florida

---

RESPONDENT'S BRIEF

OPINIONS BELOW

The order of convinction entered by the Jacksonville Municipal Court and the order of the Circuit Court of the Fourth Judicial Circuit, Duval County, Florida, affirming the convictions are unreported. The opinion of the District Court of Appeal, First District of Florida, is reported in 236 So. 2d 141 (1st Dist. Fla. 1970).

JURISDICTION

The judgment of the District Court of Appeal, First District of Florida, was entered on June 9, 1970.

The jurisdiction of this Court to grant a writ of certiorari to the District Court of Appeal, First District of Florida, pursuant to 28 U.S.C. § 1257(3) is denied with reasons therefor contained in Point I of respondent's Argument.

ORDINANCES, STATUTES, AND CONSTITUTIONAL PROVISIONS INVOLVED

The applicable constitutional provisions, statutes, and ordinances involved are the following:

Section 26-57
Jacksonville Ordinance Code

"Sec. 26-57. *Vagrants.*

"Rogues and vagabonds, or dissolute persons who go about begging, common gamblers, persons who use juggling or unlawful games or plays, common drunkards, common night walkers, thieves, pilferers or pickpockets, traders in stolen property, lewd, wanton and lascivious persons, keepers of gambling places, common railers and brawlers, persons wandering or strolling around from place to place without any lawful purpose or object, habitual loafers, disorderly persons, persons neglecting all lawful business and habitually spending their time by frequenting houses of ill fame, gaming houses or places where alcoholic beverages are sold or served, persons able to work but habitually living upon the earnings of their wives or minor children, shall be deemed vagrants and, upon conviction in the Municipal Court shall be punished as provided for Class D offenses. (Code 1942, ch. 33, § 42; Code 1953, § 27-48)".

Section 856.02,
Florida Statutes

"856.02 *Vagrants.*--Rogues and vagabonds, idle or dissolute persons who go about begging, common gamblers, persons who use juggling, or unlawful games or plays, common pipers and fiddlers, common drunkards, common night walkers, thieves, pilferers, traders in stolen property, lewd, wanton and lascivious persons, keepers of gambling places, common railers and brawlers, person who neglect their calling or employment, or are without reasonably continuous employment or regular income and who have not sufficient property to sustain them, and misspend what they earn without providing for themselves or the support of their families, persons wandering or strolling around from place to place without any lawful purpose or object, habitual loafers, idle and disorderly persons, persons neglecting all lawful business and habitually spending their time by frequenting houses of ill fame, gaming houses or tippling shops, persons able to work but habitually living upon the earnings of their wives and minor children, and all able bodied male persons over the age of eighteen years who are without means of support and remain in idleness, shall be deemed vagrants, and upon convinction shall be subject to the penalty provided in § 856.03."

Fourteenth Amendment,
United States Constitution, Section 1

"Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce

any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law nor deny to any person within its jurisdiction the equal protection of the laws."

28 U.S.C. § 1257

"§ 1257. *State courts; appeal; certiorari*

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

"(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929."

Art. V, § 5(3)
Florida Constitution

"§ 5. District Courts of Appeal

"(3) *Jurisdiction.* Appeals from trial courts in each appellate district, and from final orders or decrees of county judge's courts pertaining to probate matters or to estates and interests of minors and incompetents, may be taken to the court of appeal of such district, as a matter of right, from all final judgments or decrees

except those from which appeals may be taken direct to the supreme court or to a circuit court.

"The supreme court shall provide for expeditious and inexpensive procedure in appeals to the district courts of appeal, and may provide for review by such courts of interlocutory orders or decrees in matters reviewable by the district courts of appeal.

"The district courts of appeal shall have such powers of direct review of administrative action as may be provided by law.

"A district court of appeal or any judge thereof may issue writs of habeas corpus returnable before that district court of appeal or any judge thereof, or before any circuit judge in that district. A district court of appeal may issue writs of mandamus, certiorari, prohibition, and quo warranto, and also all writs necessary or proper to the complete exercise of its jurisdiction."

Art. V, § 6(3)
Florida Constitution

"§ 6. Circuit Courts

"(3) *Jurisdiction.* The circuit courts shall have exclusive original jurisdiction in all cases in equity except such equity jurisdiction as may be conferred on juvenile courts, in all cases at law not cognizable by subordinate courts, in all cases involving the legality of any tax, assessment, or toll, in the action of ejectment, in all actions involving the titles or boundaries of real estate, and in all criminal cases not cognizable by subordinate courts. They shall have original juris-

diction of actions of forcible entry and unlawful detainer, and of such other matters as the legislature may provide. They shall have final appellate jurisdiction in all civil and criminal cases arising in the county court, or before county judges' courts, of all misdemeanors tried in criminal courts of record, and of all cases arising in municipal courts, small claims courts, and courts of justices of the peace. The circuit courts and judges shall have power to issue writs of mandamus, injunction, quo warranto, certiorari, prohibition, and habeas corpus, and all writs necessary or proper to the complete exercise of their jurisdiction.

"The circuit courts and circuit judges shall have such extraterritorial jurisdiction in chancery cases as may be prescribed by law."

QUESTIONS PRESENTED

POINT I

WHETHER THE DENIAL OF CERTIORARI BY THE FLORIDA DISTRICT COURT OF APPEAL IS, WITHIN THE MEANING OF 28 U.S.C. § 1257, A FINAL JUDGMENT "RENDERED BY THE HIGHEST COURT OF A STATE IN WHICH A DECISION COULD BE HAD" AND, IF NOT, WHETHER THE WRIT ISSUED MUST BE QUASHED AS IMPROVIDENTLY GRANTED?

POINT II

WHETHER THE JUDGMENT OF THE FLORIDA DISTRICT COURT OF APPEAL MUST BE AFFIRMED IF BASED ON AN ADEQUATE STATE GROUND?

POINT III

WHETHER PETITIONERS HAVE STANDING TO CHALLENGE THE CONSTITUTIONALITY OF THE JACKSONVILLE VAGRANCY ORDINANCE AND THE FLORIDA VAGRANCY STATUTES IN THEIR ENTIRETY WHERE THE PETITIONERS WERE RESPECTIVELY CHARGED, TRIED, AND CONVICTED ONLY FOR BEING VAGRANTS WITHIN THE MEANING OF CERTAIN PROVISIONS OF THE JACKSONVILLE VAGRANCY ORDINANCE?

POINT IV

WHETHER PROVISIONS OF THE JACKSONVILLE VAGRANCY ORDINANCE ARE SEVERABLE?

POINT V

WHETHER THE JACKSONVILLE VAGRANCY ORDINANCE VIOLATES THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION?

STATEMENT OF THE CASE

Petitioners were convicted of vagrancy in the Jacksonville Municipal Court. On appeal to the Circuit Court of the Fourth Judicial Circuit, Duval County, Florida, the convictions were affirmed (App. 19). On petition to the District Court of Appeal, First District of Florida, for writ of certiorari, jurisdiction was declined and the petition dismissed (App. 39).

STATEMENT OF FACTS

The parties have stipulated to the statement of facts as presented in petitioners' brief under the heading Statement of Facts.

SUMMARY OF ARGUMENT

The writ of certiorari must be quashed since under applicable decisions of this Court the denial of certiorari by the Florida District Court of Appeal is not, within the meaning of 28 U.S.C. § 1257, a final judgment "rendered by the highest court of a state in which a decision could be had." See *American Railway Express Company v. Levee*, 263 U.S. 19, 44 S. Ct. 11, 68 L. Ed. 140 (1923).

Assuming that this Court could review the denial of certiorari by the Florida District Court of Appeal, this Court must affirm the judgment inasmuch as it is based on an adequate state ground, the denial of certiorari, which may, under applicable Florida law, be granted only where the lower court lacked jurisdiction or departed from the essential requirements of the law with respect to the procedure followed. See *Edelman v. California*, 334 U.S. 357, 73 S. Ct. 293, 97 L. Ed. 387 (1953).

Moreover, petitioners lack standing to challenge the constitutionality of the Florida vagrancy statute since the constitutionality of the statute was not challenged in the lower courts.

Additionally, petitioners were charged, tried, and convicted for violating only certain provisions of the Jacksonville vagrancy ordinance and, thus, have standing to challenge only those provisions and not the entire ordinance. See *United States v. Raines*, 362 U.S. 17, 80 S. Ct. 519, 4 L. Ed. 524 (1960).

Furthermore, the Jacksonville vagrancy ordinance is a severable ordinance and must be so examined, if examined at all, by this Court. See *United States v. Jackson*, 390 U.S. 570, 88 S. Ct. 1209, 20 L. Ed. 2d 138 (1968).

In any event, the Jacksonville vagrancy ordinance is a valid police power measure designed to promote the health, safety, morals, and general welfare of our citizenry by checking the criminal process at its source, thus, protecting society by preventing the occurrence of violent crimes and benefiting those who might otherwise become irretrievably lost in a life of serious crime.

The ordinance is neither vague nor does it make "status" a crime, for in vagrancy cases, as in other criminal cases, the state must carry the burden of proving the acts which constitute the crime beyond a reasonable doubt.

Thus viewed, the Jacksonville vagrancy ordinance is a constitutional and vitally necessary exercise of the police power.

ARGUMENT

POINT I

THE WRIT OF CERTIORARI MUST BE QUASHED INASMUCH AS THE DENIAL OF CERTIORARI BY THE FLORIDA DISTRICT COURT OF APPEAL IS NOT, WITHIN THE MEANING OF 28 U.S.C. § 1257, A FINAL JUDGMENT "RENDERED BY THE HIGHEST COURT OF A STATE IN WHICH A DECISION COULD BE HAD."

It is elementary that this Court must quash a writ improvidently granted.

The present writ must of necessity be quashed inasmuch as it appears that it is directed to the Florida District Court of Appeal when this Court's previous holdings indicate clearly that when the District Court denied certiorari, the Florida Circuit Court became the "highest court of a state in which a decision could be had" within the meaning of 28 U.S.C. § 1257.

Under the Florida Constitution, the Circuit Courts have *final* appellate jurisdiction in all cases arising in Municipal Court. Art. V, § 6(3), Florida Constitution.

Prior to 1957, the Florida Supreme Court had jurisdiction to issue common law writs of certiorari. In 1957, by constitutional amendment, the Florida District Courts of Appeal were created and provided with certiorari jurisdiction. Art. V, § 5(3), Florida Constitution.

Shortly after this constitutional amendment, the Florida Supreme Court, in referring to the constitutional change in certiorari jurisdiction, held that the judgment of a Circuit Court, sitting in the exercise of its final appellate jurisdiction, was subject to certiorari review, not by the Supreme Court, but exclusively by the District Courts of Appeal. *Robinson v. State*, 132 So. 2d 3 (1961).

In the present case, petitioners were convicted in Municipal Court and, on appeal, the Circuit Court in exercising final appellate jurisdiction, affirmed petitioners' conviction.

Thus, it is apparent that the District Court of Appeal was the only Florida Court which could have granted certiorari to the petitioners, the Florida Supreme Court being precluded by the holding in *Robinson v. State*, supra, and the Florida Constitution.

In the case at bar, the District Court of Appeal, citing *State v. Smith*, 118 So. 2d 792 (Fla. App. 1st 1960), specifically recognized that under applicable state law a writ of certiorari can issue only where the inferior court has exceeded its jurisdiction or has not proceeded according to the essential requirements of the law and can not be used for the purpose of securing a second appeal on the merits. *Brown v. City of Jacksonville*, 236 So. 2d 141, 142 (1970).

Thus, acknowledging its limited certiorari jurisdiction, the District Court of Appeal, quite properly, dismissed petitioners' petition for writ of certiorari.

Petitioners now seek to have this Court review by certiorari the denial of certiorari by the Florida District Court of Appeal. Such a review is precluded by the numerous cases in which this Court has held that where review by the highest state court in which a decision *might* be had is discretionary and the state court, in its discretion, declines to take jurisdiction, the highest court which rendered judgment on the merits becomes the highest court of the state in which a decision *could* be had for the purpose of review by the United States Supreme Court.

See *Panhandle Eastern Pipe Line Co. v. Calvert*, 347 U.S. 157, 74 S. Ct. 396, 98 L. Ed. 583 (1954); *Hammerstein v. Superior Court of California*, 341 U.S. 491, 71 S. Ct. 820, 95 L. Ed. 1135 (1951); *Adam v. Saenger*, 303 U.S. 59, 58 S. Ct. 454, 82 L. Ed. 649 (1938); *Chicago & E.I.R. Co. v. Industrial Commission*, 284 U.S. 296, 52 S. Ct. 151, 76 L. Ed. 304 (1932); *Western Union Telegraph Co. v. Priester*, 276 U.S. 252, 48 S. Ct. 234, 72 L. Ed. 555 (1928); *American Railway Express Company v. Levee*, 263 U.S. 19, 44 S. Ct. 11, 68 L. Ed. 140 (1923); *Randall v. Board of Commissioners*, 261 U.S. 252, 43 S. Ct. 252, 67 L. Ed. 637 (1923); *Norfolk & S. Turnpike*

Co. v. Virginia, 225 U.S. 264, 32 S. Ct. 828, 56 L. Ed. 1082 (1912); *Western U. Teleg. Co. v. Crovo*, 220 U.S. 364, 31 S. Ct. 399, 55 L. Ed. 498 (1911); *Missouri K. & T. R. Co. v. Elliott*, 184 U.S. 530, 22 S. Ct. 446, 46 L. Ed. 673 (1902).

As was ably stated by Mr. Justice Holmes, speaking for a unanimous Court in *American R. Express Co. v. Levee*, supra,

> ". . . under the Constitution of the state, the jurisdiction of the supreme court is discretionary (art. 7, § 11); and although it was necessary for the petitioner to invoke that jurisdiction in order to make it certain that the case could go no farther . . . when the jurisdiction was declined, the court of appeal was shown to be the highest court of the state in which a decision could be had."
>
> *American R. Express Co. v. Levee*, 263 U.S. at 20.

Moreover, Mr. Justice Holmes went on to point out that:

> ". . . Another section of the article cited required the supreme court to give its reasons for refusing the writ; and therefore the fact that the reason happened to be an opinion upon the merits rather than some more technical consideration did not take from the refusal its obstensible character of declining jurisdiction."
>
> *American R. Express Co. v. Levee*, 263 U.S. at 21.

And in *Norfolk & S. Turnpike Co. v. Virginia*, supra, the Court unanimously announced in unequivocal terms that:

> ". . . from and after the opening of the next term of this court, where a writ of error is prosecuted to

> an alleged judgment or a decree of a court of last resort of a state, declining to allow a writ of error to or an appeal from a lower state court, unless it *plainly appears, on the fact of the record, by an affirmance in express terms* of the judgment or decree sought to be reviewed, that the refusal of the court to allow an appeal or writ of error was the exercise by it of jurisdiction to review the case upon the merits, we shall consider ourselves constrained to apply the rule announced in the *Crovo* Case, and shall therefore, by not departing from the *face of the record*, solve against jurisdiction the ambiguity created by the form in which the state court has expressed its action." *Norfolk & S. Turnpike Co. v. Virginia* 225 U.S. at 269. (Emphasis supplied).

In the present case, as previously pointed out, by virtue of constitutional amendment and the ruling of the Florida Supreme Court in *Robinson v. State*, supra, the District Court of Appeal was the highest state court in which a decision *might* have been rendered. When, however, the District Court of Appeal declined jurisdiction and dismissed the petition for certiorari, the Florida Circuit Court became the highest state court in which a decision *could* be had within the meaning of 28 U.S.C. § 1257.

Accordingly, under the applicable decisions of this Court, above cited, this Court was without jurisdiction to issue a writ of certiorari to the Florida District Court of Appeal and must of necessity and in the interest of preserving its jurisdictional integrity quash the present writ as improvidently granted.

POINT II

THE JUDGMENT OF THE FLORIDA DISTRICT COURT OF APPEAL MUST BE AFFIRMED INASMUCH AS IT WAS BASED ON AN ADEQUATE STATE GROUND.

Assuming arguendo that this Court can review by certiorari the denial of certiorari by the Florida District Court of Appeal, the judgment of the District Court of Appeal must be affirmed inasmuch as there was an adequate state ground on which it was based. See *Edelman v. California*, 334 U.S. 357, 73 S. Ct. 293, 97 L. Ed. 387 (1953).

As previously shown, under applicable decisions of the Florida court, common law certiorari is properly granted only where the lower court lacked jurisdiction or in the procedure followed departed from the essential requirements of the law as defined by Florida law.

As observed by the Florida District Court of Appeal in declining jurisdiction in the case *sub judice*,

> ". . . The Circuit Court sitting as an appellate court did not exceed its jurisdiction and did not depart from the essential requirements of the law, but, on the contrary, properly followed the decision of the highest appellate court of this State, Johnson v. State, supra.
>
> *Brown v. City of Jacksonville*, 236 So. 2d 141 (1970) at p. 142; App. 41.

Thus, under this Court's well settled rules regarding the disposition of appeals and the avoidance of constitutional questions unless essential to a determination of the case, the decision of the Florida District Court of Appeal must be affirmed since it was based on an adequate state ground, the proper denial of certiorari under Florida law.

POINT III

THE PETITIONERS LACK STANDING TO CHALLENGE THE CONSTITUTIONALITY OF THE JACKSONVILLE VAGRANCY ORDINANCE AND THE FLORIDA VAGRANCY STATUTE IN THEIR ENTIRETY SINCE THE PETITIONERS WERE RESPECTIVELY CHARGED, TRIED, AND CONVICTED ONLY FOR BEING VAGRANTS WITHIN THE MEANING OF CERTAIN PROVISIONS OF THE JACKSONVILLE VAGRANCY ORDINANCE.

That the court will not formulate a rule of constitutional law broader than that required by the precise facts to which it is to be applied is a rule rigidly adhered to by this Court. *United States v. Raines*, 362 U.S. 17, 80 S. Ct. 519, 4 L. Ed. 2d 523 (1960). Accordingly, this Court has held that it will not consider the constitutionality of a portion of a legislative enactment at the instance of one whose interests are not affected by it. *Board of Trade v. Olsen*, 263 U.S. 1, 43 S. Ct. 470, 67 L. Ed. 839 (1923).

In the case at bar, the present petitioners were variously charged, tried, and convicted for violating the following sections of the Jacksonville vagrancy ordinance:

Papachristou Calloway Melton Johnson	Vagrancy - prowling by auto
Smith	Vagrancy - vagabond
Heath	Vagrancy - loitering Vagrancy - common thief
Campbell	Vagrancy - common thief
Brown	Vagrancy - disorderly loitering on street

Thus, the petitioners were charged with and convicted of specific violations under the ordinance and not with the violation of all of the provisions of the ordinance.

Petitioners have no standing to challenge the Florida vagrancy statute since this question was not raised in the lower courts and by petitioners' own admission "the statute is treated in this brief only because of its theoretical availability." (Petitioners' brief at p. 11)

It is respectfully submitted that this Court's long standing rulings concerning the limited scope of inquiry into the constitutionality of legislation and sound judicial discretion dictate that this Court's present investigation, if any, is restricted to a consideration of the sections of the ordinance which actually affect the present petitioners' interests, those sections with which they were charged and convicted.

POINT IV

THE PROVISIONS OF THE JACKSONVILLE VAGRANCY ORDINANCE ARE SEVERABLE AND MUST BE SO EXAMINED, IF EXAMINED AT ALL, BY THIS COURT.

It is elementary that a legislative enactment carries with it a presumption of constitutionality and that every presumption must be indulged in by this Court in favor of the law's constitutionality.

The burden of proving a law unconstitutional rests on the party alleging the law to be unconstitutional, *Metropolitan Casualty Insurance Company v. Brownell*, 294 U.S. 580, 55 S. Ct. 538, 79 L. Ed. 1070 (1935), and the law's unconstitutionality must be shown beyond a reasonable doubt. *James*

Everard's Breweries v. Day, 265 U.S. 545, 44 S. Ct. 628, 68 L. Ed. 1174 (1924).

As a natural corollary to the rule that a law is presumed constitutional, it is a cardinal rule of statutory construction followed by this Court on innumerable occasions, that where it is possible to examine a statute in its several provisions, this Court will do so. See *Chaplinsky v. New Hampshire*, 315 U.S. 568, 86 L. Ed. 1031 (1942). Indeed, this Court has said that where a statute is severable, the Court has a *duty* to sustain the constitutional portions of the statute. *El Paso & N.E. R. Co. v. Gutierrez*, 215 U.S. 87, 30 S. Ct. 21, 54 L. Ed. 106 (1909).

Moreover, the duty to sever applies with equal force to criminal statutes. See *United States v. Jackson*, 390 U.S. 570, 88 S. Ct. 1209, 20 L. Ed. 2d 138 (1968).

In ascertaining whether a statute or section thereof must stand or fall, the Court will look primarily to the intent of the Legislature in enacting the legislation under attack, and if, after separating the valid from invalid provisions of a statute, it may be presumed that the Legislature would have enacted the valid sections of the statute independent of the invalid, the Court will sustain the constitutional sections of the statute. *Champlin Refining Co. v. Corporation Co.*, 286 U.S. 210, 52 S. Ct. 559, 76 L. Ed. 1062 (1932).

The duty to separate valid from invalid provisions in criminal statutes was made abundantly clear in *United States v. Jackson*, supra, wherein this Court, in considering the constitutionality of the Federal Kidnapping Act, quoted with approval from *Chaplain v. Refining Co. v. Corporation Com.*, supra, and said:

"'The unconstitutionality of a part of an Act does

not necessarily defeat . . . the validity of its remaining provisions. Unless it is evident that the legislature would not have enacted those provisions which are within its power, independently of that which is not, the invalid part may be dropped if what is left is fully operative as a law.'"

United States v. Jackson,
390 U.S. at 585.

The Jacksonville vagrancy ordinance may be conveniently separated into eighteen definitions of vagrancy and examined as follows:

1. Rogues
2. Vagabonds
3. Dissolute persons who go about begging
4. Common gamblers
5. Persons who use juggling or unlawful games or plays
6. Common drunkards
7. Common nightwalkers
8. Thieves
9. Pilferers or pickpockets
10. Traders in stolen property
11. Lewd, wanton, and lascivious persons
12. Keepers of gambling places
13. Common railers and brawlers
14. Persons wandering or strolling around from place to place without any lawful purpose or object

15. Habitual loafers

16. Disorderly persons

17. Persons neglecting all lawful business and habitually spending their time by frequenting houses of ill fame, gaming houses, or places where alcoholic beverages are sold or served

18. Persons able to work but habitually living upon the earnings of their wives or minor children.

POINT V

THE JACKSONVILLE VAGRANCY ORDINANCE DOES NOT VIOLATE THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

As is demonstrated in petitioners' brief, people have felt the need for some form of vagrancy legislation since feudal times.

However, while petitioners' coverage of the derivation of vagrancy laws makes for interesting historical reading, what is important is not the laws' history but the laws' current relevancy and socially productive impact in today's modern society.

Imbedded in vagrancy legislation, perhaps more so than in any other form of criminal law, is the recognition that the actions or inactions of every man has an ultimate effect on every other man, for no man behaves or misbehaves in a vacuum.

Gone are the days when the nation was young, space plentiful, people few, and men were prone to strap a six-gun on their hip, load their stomachs with liquor, and become a law unto themselves.

In today's complex society, when the country's population has increased to more than two hundred million, an individualistic, do as you please, society is not only undesirable, but absolutely unthinkable if the nation is to endure.

It is with a view to preventing the more violent and socially destructive crimes by stopping the criminal process at its source that the framers of vagrancy legislation passed our vagrancy laws.

Deeply ingrained in vagrancy legislation is the recognition that the hard-core criminal, one capable of committing murder, rape, aggravated assault, and other crimes of violence, does not reach such a status as the result of a single act or by overnight metamorphosis but becomes so as the result of a gradual process of moral ond social deterioration.

As said by the Wisconsin Court in *Pollon v. State*, 261 N.W. 224 (1935), at p. 226, in affirming a conviction under a statute making a "common drunkard" a vagrant:

> ". . . There is no doubt that a person who has become violent or dangerous because of the excessive use of intoxicants can be restrained of his liberty. . . . There is no sound reason why, in the interest of the public welfare, the state may not seek to avoid such consequences by punishing a man given to the habitual use of intoxicating liquor in excess before he has reduced himself to a state of mind where he is no longer morally responsible."

It is also with a view to preventing the spread of vagrancy itself that our vagrancy laws were passed.

As the Washington Court observed in *State v. Harlowe*, 24 P.2d 601 (1933), at p. 603:

> "Society recognized that vagrancy is a parasitic disease, which, if allowed to spread, will sap the life of that upon which it feeds. To prevent the spread of the disease, the carrier must be reached. In order to discourage, and, if possible, to eradicate, vagrancy, our Legislature has enacted a statute defining vagrant persons and penalizing them according to its terms."

Vagrancy legislation, thus viewed, is a perfectly proper exercise of the police power inasmuch as it benefits society and promotes the general welfare in a variety of ways.

First, it protects the innocent and socially responsible person by preventing the more violent crimes from occurring.

Second, it aids the *developing criminal* by stopping the *criminal process* at its outset, giving the potentially dangerous criminal the chance to become rehabilitated before he commits some crime of violence from which neither he nor his victim can ever escape.

Moreover, the architects of our vagrancy laws have also recognized that the criminal law does more than simply provide punishment for criminal acts already committed, for then it is too late. The criminal law guides each member of society toward socially desirable conduct by distinguishing between socially acceptable and socially destructive behavior.

Our vagrancy laws serve as an *example* as much or more than as a deterrent or punitive force.

With the foregoing in mind, it is no wonder that while vagrancy laws existed at the common law in almost every state in the union, the people speaking through their elected

representatives in practically every state throughout our country have felt the necessity of having vagrancy legislation enacted. See 25 A.L.R.3d 792, 797 (1969).

It is also easily understood why the vast majority of courts which have considered the constitutionality of vagrancy legislation have sustained the validity of such laws as legitimate police power measures. See 25 A.L.R.3d 792, 798 (1969).

The need for vagrancy laws is further evidenced by the following partial list of cases in which courts throughout our country have upheld vagrancy legislation against constitutional attack:

State v. Starr, 113 P.2d 356 (Ariz. 1941)

Phillips v. Municipal Court of Los Angeles, 75 P.2d 548 (Cal. App. 1938)

Ex Parte Cutler, 36 P.2d 441 (Cal. App. 1934)

Ex parte McCue, 96 P. 110 (Cal. App. 1908)

Dominguez v. City and County of Denver, 363 P.2d 661 (Colo. 1961)

Ricks v. United States, 228 A.2d 316 228 A.2d 316 228 A.2d 316 (D.C. App. 1967)

Wilson v. United States, 212 A.2d 805, 336 F.2d 666

Hicks v. District of Columbia, 197 A.2d 154 (D.C. App. 1964)

Jenkins v. United States, 146 A.2d 444 (D.C. Mun. Ct. App. 1958)

Beall v. District of Columbia, 82 A.2d 765 (D.C. Mun. Ct. App. 1951)

Smith v. State, 239 So.2d 250 (Fla. 1970)

Johnson v. State, 202 So. 2d 852 (Fla. 1967)

Wallace v. State, 161 S.E. 2d 288 (Ga. 1968)

Ex Parte Clancy, 210 P. 487 (Kansas 1922)

Adamson v. Hoblitzell, 279 S.W.2d 759 (Ky. App. 1955)

City of New Orleans v. Postek, 158 So. 553 (La. 1935)

State v. McCormick, 77 So. 288 (La. 1918)

Steve v. McCorvey, 114 N.W.2d 703 (Minn. 1962)

Ex Parte Karnstrom, 249 S.W. 595 (Mo. 1923)

Ex parte Branch, 137 S.W. 886 (Mo. 1911)

Welch v. City of Cleveland, 120 N.E. 206 (Ohio 1971)

State v. Perry, 436 P.2d 252 (Ore. 1967)

City of Portland v. Goodwin, 210 P.2d 577 (Ore. 1949)

Ex parte Strittmatter, 124 S.W. 906 (Tex. Cr. App. 1910)

Morgan v. Commonwealth, 191 S.E. 791 (Va. 1937)

State v. Grenz, 175 P.2d 633 (Wash. 1947)

State v. Harlowe, 24 P.2d 601 (Wash. 1933)

Pollon v. State, 261 N.W. 224 (Wis. 1935)

It is fundamental that where the exercise of the police power is concerned, this Court will not second-guess the will of the people, as expressed through their Legislature, by attempting to determine whether the most expedient

means were used to accomplish the ends sought. On the contrary, this Court has a duty to uphold a police power measure if it bears some rational relationship to the health, safety, morals, or general welfare, and the means employed reasonably accomplish the desired purpose. *Johns v. City of Portland*, 245 U.S. 217, 38 S. Ct. 112, 62 L. Ed. 252 (1917).

It is submitted that no only does the ordinance here challenged bear a *reasonable* relationship to the general welfare of society but that the ordinance bears a *direct* relationship and is absolutely essential to the promotion of the health, safety, and morals of our citizenry.

The primary thrust, however, of petitioners' attack on the Jacksonville vagrancy ordinance is that the ordinance is void for vagueness.

The Florida Supreme Court has twice held the Florida vagrancy statute, which is, in its essential terms, traced by the Jacksonville vagrancy ordinance, constitutional against the claim that the statute was void for vagueness. *Smith v. State*, 239 So. 2d 250 (Fla. 1970); *Johnson v. State*, 202 So. 2d 852 (Fla. 1967).

As this Court pointedly observed in *United States v. Petrillo*, 322 U.S. 1, 67 S. Ct. 1538, 91 L. Ed. 1877 (1947), at p. 7, in an opinion delivered by the late Mr. Justice Black ". . . the Constitution does not require impossible standards" and due process is complied with where a statute ". . . provides an adequate warning as to what conduct falls under its ban, and marks boundaries sufficiently distinct for judges and juries fairly to administer the law in accordance with the will of [the legislature]."

Furthermore, as Mr. Justice Black astutely pointed out:

". . . That there may be marginal cases in which it is

> difficult to determine the side of the line on which a particular fact situation falls is no sufficient reason to hold the language too ambiguous to define a criminal offense." ibid.

Moreover, in *Winters v. New York*, 333 U.S. 507 68 S. Ct. 665, 92 L. Ed. 840 (1948), this Court said in no uncertain terms that it would go ". . . far to uphold state . . . statutes that deal with offenses difficult to define . . ." and ". . . only a *definite conviction*" by the Court that the Fourteenth Amendment has been violated " . . . justifies reversal of the court primarily charged with responsibility to protect persons from conviction under a vague state statute." *Winters v. New York*, 333 U.S. at 517. (Emphasis supplied)

This Court has held the following words *not* unconstitutionally vague:

> (Obscene, lewd, lascivious, or indecent material)
>
> *Roth v. United States*, 354 U.S. 476, 77 S. Ct. 1304, 1 L. Ed. 2d 1498 (1957).
>
> (Exposing citizens to derision or obloquy)
>
> *Beauharnais v. Illinois*, 343 U.S. 250, 72 S. Ct. 725, 96 L. Ed. 919 (1952).
>
> (So far as practical)
>
> *Boyce Motor Lines, Inc. v. United States*, 342 U.S. 337, 72 S. Ct. 329, 96 L. Ed. 367 (1952).
>
> (Loud and raucous noises)
>
> *Kovacs v. Cooper*, 336 U.S. 77, 69 S. Ct. 448, 93 L. Ed. 513 (1949).

(In excess of number employees needed)

United States v. Petrillo, supra.

(Undesirable residents)

Mahler v. Eby, 264 U.S. 32, 44 S. Ct. 283, 68 L. Ed. 549 (1924).

Can it be said that the foregoing words meet the test of constitutional due process and yet said with the "definite conviction" spoken of in *Winters*, that those here attacked by petitioners do not?

It is submitted that the words "obscene, lewd, lascivious, and indecent" specifically held constitutionally precise by this Court in *Roth v. United States*, supra, correspond directly with the words "dissolute" and "lewd, wanton, and lascivious" as found in the Jacksonville vagrancy ordinance.

How can the same words be found constitutionally definite in *Roth* but unconstitutionally vague in this case?

As the California Court observed in *Ex parte McCue*, 96 P. 110 (S.D. Cal. 1908), at p. 111:

> "One charged . . . with being an idle, lewd, and dissolute person, is sufficiently advised of the character of his offense. To say that the Legislature must specify the many evil and corrupt practices which might constitute one a lewd or dissolute person would often render the enforcement of a police regulation in connection therewith impossible, and this without considerating the indelicacy and impropriety of expression which would often be necessary."

And what is vague or indefinite in the words "persons wandering or strolling around from place to place without any lawful purpose or object"?

As was said by the Oregon Supreme Court in *City of Portland v. Goodwin*, 210 P.2d 577 (Ore. 1949), at p. 582:

> ". . . We are unable to conceive of a sane person roaming or being upon the street late at night without some purpose though it may be only for the purpose of going to or from his home or walking in the fresh air. . . . The words 'without having . . . a lawful purpose' are the exact equivalent of the words 'having an unlawful purpose.'
>
> "Statutes which make the absence of lawful purpose or the presence of an unlawful purpose an element of a statutory offense are many, and the constitutionality of such enactments has been repeatedly upheld."

Furthermore, when the constitutionality of the statute here assailed was previously raised before this Court in *Johnson v. Florida*, 931 U.S. 596, 88 S. Ct. 1713, 20 L. Ed. 2d 838 (1968), this Court, in declining to hold the Florida statute unconstitutional, stated that:

> ". . . The essential ingredients of the crime charged were 'wandering or strolling around from place to place without any lawful purpose or object.' *The fact that the [defendant] was on probation with a 10 p.m. curfew and out long after that hour may be held to establish that ingredient of the crime of no 'lawful purpose or object.'*"
>
> *Johnson v. Florida*
> 391 U.S. at 598
> (Emphasis supplied)

As was ably put by Mr. Justice Clark, speaking for the Court in *Boyce Motor Lines v. United States*, supra,

> ". . . few words possess the precision of mathematical symbols, most statutes must deal with untold and unforeseen variations in factual situations, and the practical necessities of discharging the business of government inevitably limit the specificity with which legislators can spell out prohibitions. Consequently, no more than a reasonable degree of certainty can be demanded. Nor is it unfair to require that one who deliberately goes periously close to an area of proscribed conduct shall take the risk that he may cross the line."
>
> *Boyce Motor Lines v. United States*, 342 U.S. at 340

Petitioners claim that the legislation attacked is unconstitutional in that it makes criminal "involuntary conditions or status of life" is equally unmeritorious. Petitioners rely on *Robinson v. California*, 370 U.S. 660, 82 S. Ct. 1417, 8 L. Ed. 2d 758 (1962). In *Robinson*, however, the defendant was convicted of being addicted to the use of narcotics. The Court found narcotic addiction to be a "disease" which might be contracted innocently or involuntarily and held making narcotic addiction a crime cruel and unusual punishment. Thus, it was the making of a "disease" criminal which the Court found objectionable in *Robinson* and not the making of a status per se. Even a casual perusal of the ordinance here attacked will reveal that none of the prohibitions found therein can be classified as a "disease."

Moreover, none of the types of vagrants specified therein can reasonably be said to be so involuntarily. Certainly, for

example, there is nothing involuntarily in becoming a "common thief."

To say that "common thieves," "common brawlers," "pickpockets," or "traders in stolen property" are so because of circumstances beyond their control necessitates that one stretch his reason to its philosophical limits. Furthermore, to adopt such reasoning and to say no criminal responsibility can be predicated thereon, would emasculate much, if not all, of the criminal law.

In any event, the Florida Supreme Court has recently admonished that:

> ". . . Persons should not be charged with vagrancy unless it is clear they are vagrants of their own volition and choice. Innocent victims of misfortune obstensibly appearing to be vagrants, but who are not such either by choice or intentional conduct should not be charged with vagrancy."
>
> *Headley v. Selkowitz,*
> 171 So. 2d 368, 370 (Fla. 1965)

Thus, the Florida courts will safeguard against an abuse of vagrancy legislation by interpreting the vagrancy law to require that the proscribed conduct be volitional.

Moreover, petitioners overlook the fact that the distinction between crimes of action and crimes of status is, upon scrutiny, tenuous, inasmuch as one does not achieve a "status" without first committing a series of "acts" which are prerequisite to the attainment of the status. As observed by the Washington Court in *State v. Harlowe*, 24 P.2d 601 (Wash. 1933), at p. 604:

> ". . . to charge appellant as being a vagrant under

> this particular subdivision of the statute [lewd, disorderly and dissolute persons] was not merely to charge her with a state of being, but was rather to charge her with a course of conduct made up of continued and related acts."

Through the premeditated, deliberated killing of another human being one achieves the "status" of a murderer; yet it would be ludicrous to argue that one could not be prosecuted for attaining such a status on the basis that to do so would be to make criminal a "status of life."

Moreover, it is doubtful that any court would strike down a statute making it a crime for anyone to "commit murder" as being unconstitutionally vague or for making status a crime since the meaning of "murder" is commonly understood."

The burden in vagrancy cases, as in all criminal cases, is upon the state to prove beyond a reasonable doubt that the accused has committed the acts which constitute the crime, whether, for example, they be acts which constitute one a "lewd, wanton, and lascivious" person or acts which constitute one a person "neglecting all lawful business and habitually spending [his] time by frequenting houses of ill fame, gaming houses, or places where alcoholic beverages are sold or served."

Petitioners also contend that the instant legislation is unconstitutional in that it requires people to offer an account of themselves, citing as authority *Ricks v. District of Columbia*, 414 F.2d 1097 (1968). In *Ricks*, however, the Court did not consider the question of whether the requirement that the accused give an account of himself violated constitutionally protected rights but found only that the statutory words "good account" were unconstitutionally vague. Re-

spondent has previously dealt with the issue of vagueness, and, in any event, there is no requirement in the ordinance that one give an account of himself. The burden, as pointed out above, is on the state to prove a statutory violation beyond a reasonable doubt.

While the statute challenged by petitioners herein was found unconstitutional in *Lazarus v. Faircloth*, 301 F. Supp. 266 (S.D. Fla. 1969), it is essential to note that the defendant in *Lazarus* was charged only with the "wandering or strolling" and "continuous employment" provisions of the statute, and it is submitted that the Court erred in holding the entire statute unconstitutional, especially in view of the fact that the Court itself took notice of the fact that ". . . there may be some valid segments to this statute." *Lazarus v. Faircloth*, supra, at p. 273.

Furthermore, and of still greater significance, is the fact that this Court has recently vacated the judgment in *Larazus* and remanded to the District Court with the direction that the Court reconsider the case in the light of *Younger v. Harris*, 401 U.S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971). *Shevin v. Lazarus*, 401 U.S. 987, 91 S. Ct. 1218, 28 L. Ed. 2d 524 (1971).

In *Younger v. Harris*, supra, in an opinion delivered by Mr. Justice Black, the Court speaks of a

> ". . . proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways. This, perhaps for lack of a better and clearer way to describe it, is referred to by many as "our Federalism," and one familiar with the profound de-

bates that ushered our Federal Constitution into existence is bound to respect "those who remain loyal to the ideals and dreams of 'Our Federalism.' The concept does not mean blind deference to 'States' Rights' any more than it means centralization of control over every important issue in our National Government and its courts. The Framers rejected both these courses. What the concept does represent is a system in which there is sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States. It should never be forgotten that this slogan, 'Our Federalism,' born in the early struggling days of our Union of States, occupies a highly important place in our Nation's history and its future."

While *Younger* and *Lazarus* involved the enjoining of state criminal prosecutions, it is submitted that the rationale behind the language quoted from *Younger* applies with equal force to the present case.

The time is here, and the need never greater, for this Court to strike a proper balance between state and federal judicial concerns and the above words of Mr. Justice Black should forever ring loud throughout our court system.

The time has also come when this Court, while never wavering from its duty to protect individual rights, should endeavor to establish a workable balance between the rights of the individual and those of society.

It is respectfully submitted that during these times, when crime is rapidly rising, to find the challenged legislation un-

constitutional on its face would be to throw "judicial handcuffs" around our law enforcement personnel and it is suggested that any unconstitutional application of the City's vagrancy law that may occur can be corrected in the proper state judicial tribunal on a case by case basis.

CONCLUSION

For the foregoing reasons, the writ of certiorari must be quashed or the judgment below affirmed.

Respectfully submitted,

/s/ James C. Rinaman, Jr.

JAMES C. RINAMAN, JR.
Special Counsel

/s/ David U. Tumin

DAVID U. TUMIN
Assistant Counsel

/s/ J. Edward Wall

J. EDWARD WALL
Assistant Counsel
1300 City Hall
Jacksonville, Florida 32202

/s/ T. Edward Austin

T. EDWARD AUSTIN, JR.
State Attorney
Duval County Courthouse
Jacksonville, Florida 32202

Attorneys for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three copies of the foregoing brief of respondent has been furnished to Samuel S. Jacobson, Esquire, 320 First Bank & Trust Building, Jacksonville, Florida 32202, attorney for petitioners; and Honorable Robert L. Shevin, Attorney General, State of Florida, The Capitol, Tallahassee, Florida, by United States mail, this 7th day of October, 1971.

/s/ J. Edward Wall

Attorney

IN THE

Supreme Court of the United States

No. 70-5030

MARGARET PAPACHRISTOU, *et al*,
Petitioners,

v.

CITY OF JACKSONVILLE

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

REPLY BRIEF

Samuel S. Jacobson
DATZ, JACOBSON & DUSEK
320 Southeast First Bank Bldg.
Jacksonville, Florida 32202

Washington, D. C. · THIEL PRESS · 202 · 393-0625

IN THE

Supreme Court of the United States

No. 70-5030

MARGARET PAPACHRISTOU, *et al*,
Petitioners,

v.

CITY OF JACKSONVILLE

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

REPLY BRIEF

Petitioners file the following reply to the brief for the City of Jacksonville.

POINT ONE

The City is reraising a contention treated by both parties in connection with the petition for certiorari and apparently disposed of by the Court's grant of certiorari.

In any event, the City's contention is only a legal quibble. It makes no real difference whether the District Court of Appeal or the Circuit Court was the "highest" Florida court in which a decision could be had. A final determination was made in both of those courts. The time for seeking a writ directed to either Florida court did not begin to run until the denial of certiorari by the District Court of Appeal. *American Railway Express Co. v. Levee*, 263 U.S. 19 (1923); *Smith v. Illinois*, 390 U.S. 129 (1968) (*sub silentio*). At the time certiorari was granted, each Florida court had "the record", since under Florida procedure each court proceeded upon a certified transcript of the Municipal Court record, with the original record remaining in the Municipal Court. The record now before this Court pursuant to the grant of certiorari fully covers the proceedings in all the Florida courts. (App. 3-43).

If the Circuit Court is the "highest court . . . in which a decision could be had" for purposes of 28 U.S.C. 1257—which is arguably true—the short answer will be for this Court to direct its review to the decision of the Circuit Court.

In no way is this case subject to dismissal because of misdirection of the writ as contended by the City. In actuality no writ has technically issued, which points up the inappropriateness of the City's claim. Even if a writ had issued, the remedy would be amendment not dismissal. See *Antherton v. Fowler*, 91 U.S. 143 (1875); *Department of Banking v. Pink*, 317 U.S. 264, 267 (1942) (*dictum*); Robertson and Kirkham, JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES (Wolfson & Kurland ed. 1951), § 426 at pp. 849-857.

POINT TWO

The City's second contention is inconsistent with its first. If this Court's review should be of the Circuit Court's judgment, the existence of an adequate State ground for the District Court of Appeal's decision would be irrelevant. It

cannot be contended in any way that the Circuit Court's judgment was based on an adequate state ground (App. 19).

In any event, there is no adequate State ground for the Court of Appeal's ruling. Although the Court of Appeal's decision was two-pronged, both prongs rested ultimately on the constitutional validity of the vagrancy legislation. The first prong adopted the decision of the Florida Supreme Court in *Johnson v. State*, 202 So. 2d 852 (Fla. 1967), upholding the Florida vagrancy statute. (App. 39).

For its second prong, the Court of Appeal ruled that the decision of the Circuit Court was not in excess of that court's jurisdiction and "did not depart from the essential requirements of the law." "Essential requirements of the law" under Florida law means considerably more than procedural regularity. It covers virtually anything involving "serious injury or injustice" or violations of "fundamental" rights. See e.g. *Haile v. Gardner*, 91 So. 376 (Fla. 1921); see also 5 FLORIDA JURISPRUDENCE, *Certiorari* § 31 for collected cases.

At the least, the decision of the District Court of Appeal was an exercise of discretion not to disturb a lower court interpretation of the Federal Constitution, which is hardly an adequate ground for insulating State court decisions from Federal review.

POINTS THREE AND FOUR

The City's third and fourth points are based on a faulty premise. The City contends that each of the petitioners was charged with only one portion of the challenged legislation. This is not so.

Petitioners were tried and convicted on a general charge of vagrancy. As pointed out on Page 11 of the petitioners' principal brief, the docket sheet language cited by the City for limiting the charge against each defendant to a specific portion of the underlying legislation was only descriptive language which did not legally limit the charge.

It is difficult to support the above statement with explicit authority since there are no formal rules of procedure or pleading for Florida's municipal courts and no published decisional law on point. Inferential support is found in various respects in the instant record. Of the cases here, only in the Jimmy Lee Smith case (vagrancy—vagabonds) was the docket's descriptive language in terms of the underlying legislation. The descriptive language of the Papachristou charge (vagrancy—prowling by auto) and the Brown charge (vagrancy—disorderly loitering on street) had no basis in either the ordinance or the statute. The Heath and Campbell charge (vagrancy—common thief) had at best uncertain basis in the legislation. Yet a motion to dismiss was denied in each case. Further, except for the Campbell case, the record shows little effort by the Court or the City's witnesses either to direct the City's evidence at or confine it to the descriptive language.

Whatever else may be true, it is clear that only in the Smith case can the City cite a specific sub-part of the legislation as the basis for conviction.

In the absence of some showing that they were convicted under a specific sub-part, the other petitioners maintain that the unconstitutionality of any sub-part of the legislation will invalidate their convictions, and they have accordingly attacked the legislation as a whole. This Court has many times ruled that a conviction on a general charge is unconstitutional if any part of the underlying statute or ordinance is unconstitutional. See *Bachellar v. Maryland*, 397 U.S. 564 (1970); *Street v. New York*, 394 U.S. 576 (1969); *Thomas v. Collins*, 323 U.S. 516 (1945); *Williams v. North Carolina*, 377 U.S. 287 (1942); and *Stromberg v. California*, 283 U.S. 359 (1931).

Apart from that, petitioners are hopeful that the Court will consider their general attack on the legislation for another reason. While in the ordinary case constitutional rulings should be no broader than necessary, vagrancy legislation presents unique considerations.

Vagrancy legislation is unparalleled in breadth. As pointed out by the City, the Jacksonville vagrancy ordinance contains at least eighteen separate and distinct elements. The Florida courts have made it abundantly clear that no part of the legislation will be ruled unconstitutional at any level of the Florida judicial system. As manifested by the Florida Supreme Court's resentful and grudging acceptance (*Johnson v. State*, 216 So.2d 7 (Fla. 1968)) of this Court's mandate in *Johnson v. Florida*, 391 U.S. 596 (1968), the Florida courts will do no more about vagrancy than this Court expressly requires. Meanwhile, Florida law enforcement officers continue to make heavy use of vagrancy: in the first ten months of 1971 the Jacksonville police alone have made 986 vagrancy arrests.[1]

Under this unusual combination of factors, only a declaration that the entire legislation is unconstitutional can prevent the daily flagrant abuse being wrought under it. A point-by-point attack would be most unsatisfactory. It has taken nearly three years for the cases at hand to reach their present posture. There is no reason to believe that new attacks could be moved more quickly. Nor is this Court in a position to entertain eighteen separate vagrancy cases. More important, having regard for the people upon whom the brunt of vagrancy enforcement falls, there is no way to estimate how much abuse will be acquiesced in while a point-by-point attack is carried out.

Vagrancy has troubled this Court for years, but the Court has always restrained itself.[2] Petitioners hope that the

---

[1]This figure was provided by the Office of the Sheriff for the City of Jacksonville.

[2]*Edwards v. California*, 314 U.S. 160 (1941); *Hicks v. District of Columbia*, 383 U.S. 252 (1966); and *Johnson v. Florida*, 391 U.S. 596 (1968).

Court's patience is now at an end and that it will here issue a declaration putting vagrancy to rest.

Respectfully submitted,

SAMUEL S. JACOBSON
DATZ, JACOBSON & DUSEK
320 Southeast First Bank Bldg.
Jacksonville, Florida 32202

PAPACHRISTOU ET AL. *v.* CITY OF JACKSONVILLE

CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

No. 70-5030. Argued December 8, 1971—Decided February 24, 1972

The Jacksonville vagrancy ordinance, under which petitioners were convicted, is void for vagueness, in that it "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute," it encourages arbitrary and erratic arrests and convictions, it makes criminal activities which by modern standards are normally innocent, and it places almost unfettered discretion in the hands of the police. Pp. 161–171.

236 So. 2d 141, reversed.

DOUGLAS, J., delivered the opinion of the Court, in which all Justices joined, except POWELL and REHNQUIST, JJ., who took no part in the consideration or decision of the case.

Samuel S. Jacobson argued the cause and filed briefs for petitioners.

T. Edward Austin, Jr., argued the cause for respondent. With him on the brief were *James C. Rinaman, Jr.*, and *J. Edward Wall.*

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This case involves eight defendants who were convicted in a Florida municipal court of violating a Jacksonville, Florida, vagrancy ordinance.[1] Their convictions

[1] Jacksonville Ordinance Code § 26-57 provided at the time of these arrests and convictions as follows:

"Rogues and vagabonds, or dissolute persons who go about begging, common gamblers, persons who use juggling or unlawful games or plays, common drunkards, common night walkers, thieves, pilferers or pickpockets, traders in stolen property, lewd, wanton and lascivious persons, keepers of gambling places, common railers and brawlers,

were affirmed by the Florida Circuit Court in a consolidated appeal, and their petition for certiorari was denied by the District Court of Appeal on the authority of *Johnson* v. *State*, 202 So. 2d 852.[2] The case is

---

persons wandering or strolling around from place to place without any lawful purpose or object, habitual loafers, disorderly persons, persons neglecting all lawful business and habitually spending their time by frequenting houses of ill fame, gaming houses, or places where alcoholic beverages are sold or served, persons able to work but habitually living upon the earnings of their wives or minor children shall be deemed vagrants and, upon conviction in the Municipal Court shall be punished as provided for Class D offenses."

Class D offenses at the time of these arrests and convictions were punishable by 90 days' imprisonment, $500 fine, or both. Jacksonville Ordinance Code § 1–8 (1965). The maximum punishment has since been reduced to 75 days or $450. § 304.101 (1971). We are advised that that downward revision was made to avoid federal right-to-counsel decisions. The Fifth Circuit case extending right to counsel in misdemeanors where a fine of $500 or 90 days' imprisonment could be imposed is *Harvey* v. *Mississippi*, 340 F. 2d 263 (1965).

We are advised that at present the Jacksonville vagrancy ordinance is § 330.107 and identical with the earlier one except that "juggling" has been eliminated.

[2] Florida also has a vagrancy statute, Fla. Stat. § 856.02 (1965), which reads quite closely on the Jacksonville ordinance. Jacksonville Ordinance Code § 27–43 makes the commission of any Florida misdemeanor a Class D offense against the City of Jacksonville. In 1971 Florida made minor amendments to its statute. See Laws 1971, c. 71–132.

Section 856.02 was declared unconstitutionally overbroad in *Lazarus* v. *Faircloth*, 301 F. Supp. 266. The court said: "All loitering, loafing, or idling on the streets and highways of a city, even though habitual, is not necessarily detrimental to the public welfare nor is it under all circumstances an interference with travel upon them. It may be and often is entirely innocuous. The statute draws no distinction between conduct that is calculated to harm and that which is essentially innocent." *Id.*, at 272, quoting *Hawaii* v. *Anduha*, 48 F. 2d 171, 172. See also *Smith* v. *Florida*, *post*, p. 172.

The Florida disorderly conduct ordinance, covering "loitering about any hotel, block, barroom, dramshop, gambling house or

here on a petition for certiorari, which we granted. 403 U. S. 917. For reasons which will appear, we reverse.

At issue are five consolidated cases. Margaret Papachristou, Betty Calloway, Eugene Eddie Melton, and Leonard Johnson were all arrested early on a Sunday morning, and charged with vagrancy—"prowling by auto."

Jimmy Lee Smith and Milton Henry were charged with vagrancy—"vagabonds."

Henry Edward Heath and a codefendant were arrested for vagrancy—"loitering" and "common thief."

Thomas Owen Campbell was charged with vagrancy—"common thief."

Hugh Brown was charged with vagrancy—"disorderly loitering on street" and "disorderly conduct—resisting arrest with violence."

The facts are stipulated. Papachristou and Calloway are white females. Melton and Johnson are black males. Papachristou was enrolled in a job-training program sponsored by the State Employment Service at Florida Junior College in Jacksonville. Calloway was a typing and shorthand teacher at a state mental institution located near Jacksonville. She was the owner of the automobile in which the four defendants were arrested. Melton was a Vietnam war veteran who had been released from the Navy after nine months in a veterans' hospital. On the date of his arrest he was a part-time computer helper while attending college as a full-time student in Jacksonville. Johnson was a tow-motor operator in a grocery chain warehouse and was a lifelong resident of Jacksonville.

At the time of their arrest the four of them were riding

---

disorderly house, or wandering about the streets either by night or by day without any known lawful means of support, or without being able to give a satisfactory account of themselves" has also been held void for "excessive broadness and vagueness" by the Florida Supreme Court, *Headley* v. *Selkowitz*, 171 So. 2d 368, 370.

in Calloway's car on the main thoroughfare in Jacksonville. They had left a restaurant owned by Johnson's uncle where they had eaten and were on their way to a night club. The arresting officers denied that the racial mixture in the car played any part in the decision to make the arrest. The arrest, they said, was made because the defendants had stopped near a used-car lot which had been broken into several times. There was, however, no evidence of any breaking and entering on the night in question.

Of these four charged with "prowling by auto" none had been previously arrested except Papachristou who had once been convicted of a municipal offense.

Jimmy Lee Smith and Milton Henry (who is not a petitioner) were arrested between 9 and 10 a. m. on a weekday in downtown Jacksonville, while waiting for a friend who was to lend them a car so they could apply for a job at a produce company. Smith was a part-time produce worker and part-time organizer for a Negro political group. He had a common-law wife and three children supported by him and his wife. He had been arrested several times but convicted only once. Smith's companion, Henry, was an 18-year-old high school student with no previous record of arrest.

This morning it was cold, and Smith had no jacket, so they went briefly into a dry cleaning shop to wait, but left when requested to do so. They thereafter walked back and forth two or three times over a two-block stretch looking for their friend. The store owners, who apparently were wary of Smith and his companion, summoned two police officers who searched the men and found neither had a weapon. But they were arrested because the officers said they had no identification and because the officers did not believe their story.

Heath and a codefendant were arrested for "loitering" and for "common thief." Both were residents of Jacksonville, Heath having lived there all his life and being

employed at an automobile body shop. Heath had previously been arrested but his codefendant had no arrest record. Heath and his companion were arrested when they drove up to a residence shared by Heath's girl friend and some other girls. Some police officers were already there in the process of arresting another man. When Heath and his companion started backing out of the driveway, the officers signaled to them to stop and asked them to get out of the car, which they did. Thereupon they and the automobile were searched. Although no contraband or incriminating evidence was found, they were both arrested, Heath being charged with being a "common thief" because he was reputed to be a thief. The codefendant was charged with "loitering" because he was standing in the driveway, an act which the officers admitted was done only at their command.

Campbell was arrested as he reached his home very early one morning and was charged with "common thief." He was stopped by officers because he was traveling at a high rate of speed, yet no speeding charge was placed against him.

Brown was arrested when he was observed leaving a downtown Jacksonville hotel by a police officer seated in a cruiser. The police testified he was reputed to be a thief, narcotics pusher, and generally opprobrious character. The officer called Brown over to the car, intending at that time to arrest him unless he had a good explanation for being on the street. Brown walked over to the police cruiser, as commanded, and the officer began to search him, apparently preparatory to placing him in the car. In the process of the search he came on two small packets which were later found to contain heroin. When the officer touched the pocket where the packets were, Brown began to resist. He was charged with "disorderly loitering on street" and "dis-

orderly conduct—resisting arrest with violence." While he was also charged with a narcotics violation, that charge was *nolled*.

Jacksonville's ordinance and Florida's statute were "derived from early English law," *Johnson* v. *State*, 202 So. 2d, at 854, and employ "archaic language" in their definitions of vagrants. *Id.*, at 855. The history is an oftentold tale. The breakup of feudal estates in England led to labor shortages which in turn resulted in the Statutes of Laborers,[3] designed to stabilize the labor force by prohibiting increases in wages and prohibiting the movement of workers from their home areas in search of improved conditions. Later vagrancy laws became criminal aspects of the poor laws. The series of laws passed in England on the subject became increasingly severe.[4]

---

[3] 23 Edw. 3, c. 1 (1349); 25 Edw. 3, c. 1 (1350).

[4] See 3 J. Stephen, History of the Criminal Law of England 203–206, 266–275; 4 W. Blackstone, Commentaries *169.

Ledwith v. *Roberts*, [1937] 1 K. B. 232, 271, gives the following summary:

"The early Vagrancy Acts came into being under peculiar conditions utterly different to those of the present time. From the time of the Black Death in the middle of the 14th century till the middle of the 17th century, and indeed, although in diminishing degree, right down to the reform of the Poor Law in the first half of the 19th century, the roads of England were crowded with masterless men and their families, who had lost their former employment through a variety of causes, had no means of livelihood and had taken to a vagrant life. The main causes were the gradual decay of the feudal system under which the labouring classes had been anchored to the soil, the economic slackening of the legal compulsion to work for fixed wages, the break up of the monasteries in the reign of Henry VIII, and the consequent disappearance of the religious orders which had previously administered a kind of 'public assistance' in the form of lodging, food and alms; and, lastly, the economic changes brought about by the Enclosure Acts. Some of these people were honest labourers who had fallen upon evil days, others were the 'wild rogues,' so common in Elizabethan times and literature, who had been born to a life of idleness and had no

But "the theory of the Elizabethan poor laws no longer fits the facts," *Edwards* v. *California*, 314 U. S. 160, 174. The conditions which spawned these laws may be gone, but the archaic classifications remain.

This ordinance is void for vagueness, both in the sense that it "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute," *United States* v. *Harriss*, 347 U. S. 612, 617, and because it encourages arbitrary and erratic arrests and convictions. *Thornhill* v. *Alabama*, 310 U. S. 88; *Herndon* v. *Lowry*, 301 U. S. 242.

Living under a rule of law entails various suppositions, one of which is that "[all persons] are entitled to be informed as to what the State commands or forbids." *Lanzetta* v. *New Jersey*, 306 U. S. 451, 453.

Lanzetta is one of a well-recognized group of cases insisting that the law give fair notice of the offending conduct. See *Connally* v. *General Construction Co.*, 269 U. S. 385, 391; *Cline* v. *Frink Dairy Co.*, 274 U. S. 445; *United States* v. *Cohen Grocery Co.*, 255 U. S. 81. In the field of regulatory statutes governing business activities, where the acts limited are in a narrow category, greater leeway is allowed. *Boyce Motor Lines, Inc.* v. *United States*, 342 U. S. 337; *United States* v. *National Dairy Products Corp.*, 372 U. S. 29; *United States* v. *Petrillo*, 332 U. S. 1.

The poor among us, the minorities, the average householder are not in business and not alerted to the regula-

---

intention of following any other. It was they and their confederates who formed themselves into the notorious 'brotherhood of beggars' which flourished in the 16th and 17th centuries. They were a definite and serious menace to the community and it was chiefly against them and their kind that the harsher provisions of the vagrancy laws of the period were directed."

And see Sherry, Vagrants, Rogues and Vagabonds—Old Concepts in Need of Revision, 48 Calif. L. Rev. 557, 560–561 (1960); Note, The Vagrancy Concept Reconsidered: Problems and Abuses of Status Criminality, 37 N. Y. U. L. Rev. 102 (1962).

tory schemes of vagrancy laws; and we assume they would have no understanding of their meaning and impact if they read them. Nor are they protected from being caught in the vagrancy net by the necessity of having a specific intent to commit an unlawful act. See *Screws* v. *United States*, 325 U. S. 91; *Boyce Motor Lines, Inc.* v. *United States*, *supra*.

The Jacksonville ordinance makes criminal activities which by modern standards are normally innocent. "Nightwalking" is one. Florida construes the ordinance not to make criminal one night's wandering, *Johnson* v. *State*, 202 So. 2d, at 855, only the "habitual" wanderer or as the ordinance describes it "common night walkers." We know, however, from experience that sleepless people often walk at night, perhaps hopeful that sleep-inducing relaxation will result.

Luis Munoz-Marin, former Governor of Puerto Rico, commented once that "loafing" was a national virtue in his Commonwealth and that it should be encouraged. It is, however, a crime in Jacksonville.

"[P]ersons able to work but habitually living upon the earnings of their wives or minor children"—like habitually living "without visible means of support"—might implicate unemployed pillars of the community who have married rich wives.

"[P]ersons able to work but habitually living upon the earnings of their wives or minor children" may also embrace unemployed people out of the labor market, by reason of a recession [5] or disemployed by reason of technological or so-called structural displacements.

[5] In *Edwards* v. *California*, 314 U. S. 160, 177, in referring to *City of New York* v. *Miln*, 11 Pet. 102, 142, decided in 1837, we said: "Whatever may have been the notion then prevailing, we do not think that it will now be seriously contended that because a person is without employment and without funds he constitutes a 'moral pestilence.' Poverty and immorality are not synonymous."

Persons "wandering or strolling" from place to place have been extolled by Walt Whitman and Vachel Lindsay.[6] The qualification "without any lawful purpose or object" may be a trap for innocent acts. Persons "neglecting all lawful business and habitually spending their time by frequenting . . . places where alcoholic beverages are sold or served" would literally embrace many members of golf clubs and city clubs.

Walkers and strollers and wanderers may be going to or coming from a burglary. Loafers or loiterers may be "casing" a place for a holdup. Letting one's wife support him is an intra-family matter, and normally of no concern to the police. Yet it may, of course, be the setting for numerous crimes.

The difficulty is that these activities are historically part of the amenities of life as we have known them. They are not mentioned in the Constitution or in the Bill of Rights. These unwritten amenities have been in part responsible for giving our people the feeling of independence and self-confidence, the feeling of creativity. These amenities have dignified the right of dissent and have honored the right to be nonconformists and the right to defy submissiveness. They have encouraged lives of high spirits rather than hushed, suffocating silence.

They are embedded in Walt Whitman's writings especially in his Song of the Open Road. They are reflected, too, in the spirit of Vachel Lindsay's I Want to Go Wandering, and by Henry D. Thoreau.[7]

---

[6] And see Reich, Police Questioning of Law Abiding Citizens, 75 Yale L. J. 1161, 1172 (1966): "If I choose to take an evening walk to see if Andromeda has come up on schedule, I think I am entitled to look for the distant light of Almach and Mirach without finding myself staring into the blinding beam of a police flashlight."

[7] "I have met with but one or two persons in the course of my life who understood the art of Walking, that is, of taking walks,—who had a genius, so to speak, for *sauntering:* which word is beauti-

This aspect of the vagrancy ordinance before us is suggested by what this Court said in 1876 about a broad criminal statute enacted by Congress: "It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large." *United States* v. *Reese*, 92 U. S. 214, 221.

While that was a federal case, the due process implications are equally applicable to the States and to this vagrancy ordinance. Here the net cast is large, not to give the courts the power to pick and choose but to increase the arsenal of the police. In *Winters* v. *New York*, 333 U. S. 507, the Court struck down a New York statute that made criminal the distribution of a magazine made up principally of items of criminal deeds of bloodshed or lust so massed as to become vehicles for inciting violent and depraved crimes against the person. The infirmity the Court found was vagueness—the absence of "ascertainable standards of guilt" (*id.*, at 515) in the

---

fully derived 'from idle people who roved about the country, in the Middle Ages, and asked charity, under pretence of going *à la Sainte Terre*,' to the Holy Land, till the children exclaimed, 'There goes a *Sainte Terrer*,' a Saunterer, a Holy-Lander. They who never go to the Holy Land in their walks, as they pretend, are indeed mere idlers and vagabonds; but they who do go there are saunterers in the good sense, such as I mean. Some, however, would derive the word from *sans terre*, without land or a home, which, therefore, in the good sense, will mean, having no particular home, but equally at home everywhere. For this is the secret of successful sauntering. He who sits still in a house all the time may be the greatest vagrant of all; but the saunterer, in the good sense, is no more vagrant than the meandering river, which is all the while sedulously seeking the shortest course to the sea. But I prefer the first, which, indeed, is the most probable derivation. For every walk is a sort of crusade, preached by some Peter the Hermit in us, to go forth and reconquer this Holy Land from the hands of the Infidels." Excursions 251–252 (1893).

sensitive First Amendment area.[9] Mr. Justice Frankfurter dissented. But concerned as he, and many others,[9] had been over the vagrancy laws, he added:

> "Only a word needs to be said regarding *Lanzetta* v. *New Jersey*, 306 U. S. 451. The case involved a New Jersey statute of the type that seek to control 'vagrancy.' These statutes are in a class by themselves, in view of the familiar abuses to which they are put. . . . Definiteness is designedly avoided so as to allow the net to be cast at large, to enable men to be caught who are vaguely undesirable in the eyes of police and prosecution, although not chargeable with any particular offense. In short, these 'vagrancy statutes' and laws against 'gangs' are not fenced in by the text of the statute or by the subject matter so as to give notice of conduct to be avoided." *Id.*, at 540.

Where the list of crimes is so all-inclusive and generalized [10] as the one in this ordinance, those convicted

---

[8] For a discussion of the void-for-vagueness doctrine in the area of fundamental rights see Note, The Void-For-Vagueness Doctrine in the Supreme Court, 109 U. Pa. L. Rev. 67, 104 *et seq.*; Amsterdam, Federal Constitutional Restrictions on the Punishment of Crimes of Status, Crimes of General Obnoxiousness, Crimes of Displeasing Police Officers, and the Like, 3 Crim. L. Bull. 205, 224 *et seq.* (1967).

[9] See *Edelman* v. *California*, 344 U. S. 357, 362 (Black, J., dissenting); *Hicks* v. *District of Columbia*, 383 U. S. 252 (Douglas, J., dissenting); *District of Columbia* v. *Hunt*, 82 U. S. App. D. C. 159, 163 F. 2d 833 (Judge Stephens writing for a majority of the Court of Appeals); Judge Rudkin for the court in *Hawaii* v. *Anduha*, 48 F. 2d 171.

The opposing views are numerous: *Ex parte Branch*, 234 Mo. 466, 137 S. W. 886; H. R. Rep. No. 1248, 77th Cong., 1st Sess., 2; Perkins, The Vagrancy Concept, 9 Hastings L. J. 237 (1958); *People* v. *Craig*, 152 Cal. 42, 91 P. 997.

[10] President Roosevelt, in vetoing a vagrancy law for the District of Columbia, said:

"The bill contains many provisions that constitute an improvement

may be punished for no more than vindicating affronts to police authority:

> "The common ground which brings such a motley assortment of human troubles before the magistrates in vagrancy-type proceedings is the procedural laxity which permits 'conviction' for almost any kind of conduct and the existence of the House of Correction as an easy and convenient dumping-ground for prob-

---

over existing law. Unfortunately, however, there are two provisions in the bill that appear objectionable.

"Section 1 of the bill contains a number of clauses defining a 'vagrant.' Clause 6 of this section would include within that category 'any able-bodied person who lives in idleness upon the wages, earnings, or property of any person having no legal obligation to support him.' This definition is so broadly and loosely drawn that in many cases it would make a vagrant of an adult daughter or son of a well-to-do family who, though amply provided for and not guilty of any improper or unlawful conduct, has no occupation and is dependent upon parental support.

"Under clause 9 of said section 'any person leading an idle life . . . and not giving a good account of himself' would incur guilt and liability to punishment unless he could prove, as required by section 2, that he has lawful means of support realized from a lawful occupation or source. What constitutes 'leading an idle life' and 'not giving a good account of oneself' is not indicated by the statute but is left to the determination in the first place of a police officer and eventually of a judge of the police court, subject to further review in proper cases. While this phraseology may be suitable for general purposes as a definition of a vagrant, it does not conform with accepted standards of legislative practice as a definition of a criminal offense. I am not willing to agree that a person without lawful means of support, temporarily or otherwise, should be subject to the risk of arrest and punishment under provisions as indefinite and uncertain in their meaning and application as those employed in this clause.

"It would hardly be a satisfactory answer to say that the sound judgment and decisions of the police and prosecuting officers must be trusted to invoke the law only in proper cases. The law itself should be so drawn as not to make it applicable to cases which obviously should not be comprised within its terms." H. R. Doc. No. 392, 77th Cong., 1st Sess.

lems that appear to have no other immediate solution." Foote, Vagrancy-Type Law and Its Administration, 104 U. Pa. L. Rev. 603, 631.[11]

Another aspect of the ordinance's vagueness appears when we focus, not on the lack of notice given a potential offender, but on the effect of the unfettered discretion it places in the hands of the Jacksonville police. Caleb Foote, an early student of this subject, has called the vagrancy-type law as offering "punishment by analogy." *Id.*, at 609. Such crimes, though long common in Russia,[12] are not compatible with our constitutional

[11] Thus, "prowling by auto," which formed the basis for the vagrancy arrests and convictions of four of the petitioners herein, is not even listed in the ordinance as a crime. But see *Hanks* v. *State*, 195 So. 2d 49, 51, in which the Florida District Court of Appeal construed "wandering or strolling from place to place" as including travel by automobile.

[12] J. Hazard, The Soviet Legal System 133 (1962):

"The 1922 code was a step in the direction of precision in definition of crime, but it was not a complete departure from the concept of punishment in accordance with the dictates of the social consciousness of the judge. Laying hold of an old tsarist code provision that had been in effect from 1864 to 1903 known by the term 'analogy,' the Soviet draftsmen inserted an article permitting a judge to consider the social danger of an individual even when he had committed no act defined as a crime in the specialized part of the code. He was to be guided by analogizing the dangerous act to some act defined as crime, but at the outset the analogies were not always apparent, as when a husband was executed for the sadistic murder of a wife, followed by dissection of her torso and shipment in a trunk to a remote railway station, the court arguing that the crime was analogous to banditry. At the time of this decision the code permitted the death penalty for banditry but not for murder without political motives or very serious social consequences."

"On the traditionally important subject of criminal law, Algeria is rejecting the flexibility introduced in the Soviet criminal code by the 'analogy' principle, as have the East-Central European and black African states." Hazard, The Residue of Marxist Influence in Algeria, 9 Colum. J. of Transnat'l L. 194, 224 (1970).

system. We allow our police to make arrests only on "probable cause," [13] a Fourth and Fourteenth Amendment standard applicable to the States [14] as well as to the Federal Government. Arresting a person on suspicion, like arresting a person for investigation, is foreign to our system, even when the arrest is for past criminality. Future criminality, however, is the common justification for the presence of vagrancy statutes. See Foote, *supra*, at 625. Florida has, indeed, construed her vagrancy statute "as necessary regulations," *inter alia*, "to deter vagabondage and prevent crimes." *Johnson* v. *State*, 202 So. 2d 852; *Smith* v. *State*, 239 So. 2d 250, 251.

A direction by a legislature to the police to arrest all "suspicious" persons [15] would not pass constitutional muster. A vagrancy prosecution may be merely the cloak for a conviction which could not be obtained on the real but undisclosed grounds for the arrest. *People*

---

[13] *Johnson* v. *United States*, 333 U. S. 10, 15–17.

[14] *Whiteley* v. *Warden*, 401 U. S. 560.

[15] On arrests for investigation, see Secret Detention by the Chicago Police, A Report by the American Civil Liberties Union (1959). The table below contains nationwide data on arrests for "vagrancy" and for "suspicion" in the three-year period 1968–1970.

	Vagrancy		Suspicion		Combined Offenses	
Year*	Total rptd. arrests	Rate per 100,000	Total rptd. arrests	Rate per 100,000	Total rptd. arrests	Rate per 100,000
1968	99,147	68.2	89,986	61.9	189,133	130.1
1969	106,269	73.9	88,265	61.4	194,534	135.3
1970	101,093	66.7	70,173	46.3	171,266	113.0
3-year averages	102,170	69.6	82,808	56.5	184,978	126.1

*Reporting agencies represent population of: 1968—145,306,000; 1969—143,815,000; 1970—151,604,000.

Source: FBI Uniform Crime Reports, 1968–1970.

v. *Moss*, 309 N. Y. 429, 131 N. E. 2d 717. But as Chief Justice Hewart said in *Frederick Dean*, 18 Crim. App. 133, 134 (1924):

> "It would be in the highest degree unfortunate if in any part of the country those who are responsible for setting in motion the criminal law should entertain, connive at or coquette with the idea that in a case where there is not enough evidence to charge the prisoner with an attempt to commit a crime, the prosecution may, nevertheless, on such insufficient evidence, succeed in obtaining and upholding a conviction under the Vagrancy Act, 1824."

Those generally implicated by the imprecise terms of the ordinance—poor people, nonconformists, dissenters, idlers—may be required to comport themselves according to the life style deemed appropriate by the Jacksonville police and the courts. Where, as here, there are no standards governing the exercise of the discretion granted by the ordinance, the scheme permits and encourages an arbitrary and discriminatory enforcement of the law. It furnishes a convenient tool for "harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure." *Thornhill* v. *Alabama*, 310 U. S. 88, 97–98. It results in a regime in which the poor and the unpopular are permitted to "stand on a public sidewalk . . . only at the whim of any police officer." *Shuttlesworth* v. *Birmingham*, 382 U. S. 87, 90. Under this ordinance,

> "[I]f some carefree type of fellow is satisfied to work just so much, and no more, as will pay for one square meal, some wine, and a flophouse daily, but a court thinks this kind of living subhuman, the fellow can be forced to raise his sights or go to jail as a vagrant." Amsterdam, Federal Constitutional Restrictions on the Punishment of Crimes of Status,

Crimes of General Obnoxiousness, Crimes of Displeasing Police Officers, and the Like, 3 Crim. L. Bull. 205, 226.

A presumption that people who might walk or loaf or loiter or stroll or frequent houses where liquor is sold, or who are supported by their wives or who look suspicious to the police are to become future criminals is too precarious for a rule of law. The implicit presumption in these generalized vagrancy standards—that crime is being nipped in the bud—is too extravagant to deserve extended treatment. Of course, vagrancy statutes are useful to the police. Of course, they are nets making easy the roundup of so-called undesirables. But the rule of law implies equality and justice in its application. Vagrancy laws of the Jacksonville type teach that the scales of justice are so tipped that even-handed administration of the law is not possible. The rule of law, evenly applied to minorities as well as majorities, to the poor as well as the rich, is the great mucilage that holds society together.

The Jacksonville ordinance cannot be squared with our constitutional standards and is plainly unconstitutional.

Reversed.

MR. JUSTICE POWELL and MR. JUSTICE REHNQUIST took no part in the consideration or decision of this case.